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U.S. DISTRICT COURT
WESTERN DISTRICT OF OH

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Case No. 1:05-CV-0035
Joel Goldman

v.

Healthcare Management Systems, Inc.
and Thomas E. Givens

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

EXHIBIT C

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

ORIGINAL

June 14, 2006

1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL GOLDMAN,
Plaintiff,

-vs-

No.: 1:05-cv-35
Hon. Richard A. Enslen

HEALTHCARE MANAGEMENT
SYSTEMS, INC. and
THOMAS E. GIVENS,
Defendants,

D E P O S I T I O N O F

WITNESS: JOEL GOLDMAN

LOCATION: 2723 South State Street
Suite 400
Ann Arbor, Michigan

DATE: June 14, 2006
9:15 a.m.

APPEARANCES:

FOR PLAINTIFF: DYKEMA GOSSETT, P.L.L.C.
2723 South State Street
Ann Arbor, Michigan 48104
BY: MR. BRADLEY L. SMITH
MS. KRISTA L. LENART

FOR DEFENDANTS: BONE, McALLESTER, NORTON, P.L.L.C.
511 Union Street, Suite 1600
Nashville, Tennessee 37219
BY: MR. KEITH C. DENNEN

VARNUM, RIDDERING, SCHMIDT, HOWLETT
Bridgewater Place
Grand Rapids, Michigan 49501
BY: MR. BRYAN R. WALTERS

Also Present: Mr. Joel Goldman

Reporter: Karen Klerekoper, CSR-4250, RPR

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

2

I N D E X

WITNESS: JOEL GOLDMAN

PAGE NO.

Examination by Mr. Dennen

3

EXHIBIT INDEX

EXHIBIT NO.

DESCRIPTION

PAGE NO.

200 Minute book (if it exists) 30

201 Proposals with Rawlins & Douglas 89

202 Central Medico Turabo proposal 95

203 (Unidentified)

204 Copyright registration 177

205 Exhibit submitted to
Copyright Office 178

206 Pharmacy program 189

207 '97 code copyright registration 194

208 Source code printout 200

209 Goldman & Goldman version
of copyright 205210 Program with different heading
and source code 205

211 Copy of same code already discussed 206

212, 213 " " 207

214, 215 " " but different program 208

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

3

1 Ann Arbor, Michigan

2 June 14, 2006

3 At 9:15 a.m.

5 JOEL GOLDMAN

6 HAVING BEEN CALLED BY THE DEFENDANTS AND SWORN:

7 EXAMINATION

8 BY MR. DENNEN:

9 Q. Good morning, Mr. Goldman.

10 A. Good morning.

11 Q. I'm Keith Dennen. We have met previously and we met
12 again this morning. As you know, I represent
13 Healthcare Management Systems and Tom Givens. We are
14 here today for your deposition, and before we get
15 started I know you have sat through depositions in
16 this case.

17 Have you previously given your deposition?

18 A. No.

19 Q. Okay. Have you ever testified in a court trial?

20 A. No.

21 Q. Okay. We generally know that the court reporter has
22 sworn you in. That means you are under an obligation
23 to tell the truth. I'm going to ask you questions.
24 You have done a really good job of listening to me.
25 If you would, please be sure to respond out loud.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

4

1 Don't shake your head. Don't assume that the court
2 reporter is taking it down correctly unless you say
3 it.

4 The purpose of this will -- is not an
5 endurance contest. If you need to take a break,
6 please let us know. I will ask you, if there is a
7 question pending to go ahead and answer the question.
8 Obviously, you are here to answer questions. Your
9 attorneys are not here to answer questions for you. I
10 say that to say, if I ask you a question, I'm asking
11 for a response from you, not for you to ask and
12 discuss it with your attorney.

13 Your attorney may make objections. That's
14 for the record. You still are obligated to answer the
15 question pending. We will discuss the objections at a
16 later date.

17 Do you understand those instructions?

18 A. Yes.

19 Q. Do you have any questions before we get started?

20 A. No.

21 Q. Okay. First of all, Mr. Goldman, if you would, sir,
22 please tell me -- did you attend college?

23 A. Yes.

24 Q. What college did you attend?

25 A. Temple University.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

5

1 Q. Did you receive a degree from Temple?

2 A. No.

3 Q. When did you attend Temple University?

4 A. 1966, well, yeah, I started in '66, September of '66.

5 Q. Did you attend Temple for only one year?

6 A. Yes.

7 Q. Okay. What was your course of study at Temple when
8 you were attending?

9 A. Liberal arts.

10 Q. Were you in the military?

11 A. Yes.

12 Q. Which branch were you in?

13 A. The Air Force.

14 Q. When were you in the Air Force?

15 A. From '67 until '7 -- I'm not sure of the exact
16 discharge date, three years and ten months.

17 Q. Did you receive an honorable discharge?

18 A. Yes.

19 Q. What was your military classification? What do they
20 call it?

21 A. Rank.

22 Q. No, the specialty.

23 A. Computer programmer.

24 Q. Okay. Prior to joining the United States Air Force,
25 had you had any computer programming training?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

6

1 A. No.

2 Q. Obviously if you were a computer programmer, then you
3 received training in computer programming. Tell me
4 briefly about your training in the Air Force.

5 A. I went to a technical school in Texas for six weeks.

6 Q. Did you receive any other computer programming
7 training in the United States Air Force?

8 A. You mean additional schools or --

9 Q. Yes, formal training.

10 A. No.

11 Q. Okay. What, I guess, programming language,
12 programming computer, did you receive training in in
13 the Air Force?

14 A. SPS.

15 Q. Is that a computer language?

16 A. Yes.

17 Q. Now, you were discharged approximately 1970 to '71.
18 What did you do after your discharge?

19 A. Traveled the country.

20 Q. Okay. How long did you travel the country?

21 A. About a year.

22 Q. During that time did you engage in any occupation or
23 was it solely traveling?

24 A. I traveled, and then I went to school briefly in
25 Colorado.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

7

1 Q. What kind of school or what school did you attend in
2 Colorado?

3 A. El Paso Community College.

4 Q. Did you receive a degree from El Paso?

5 A. No.

6 Q. What was your course of study at El Paso?

7 A. Computer programming.

8 Q. Do you recall your dates of attendance at El Paso?

9 A. Not really.

10 Q. From El Paso did you then renew your traveling or did
11 you enter into the job market?

12 A. I went to San Diego.

13 Q. Did you attend an educational institution or did you
14 go to work --

15 A. I went to work.

16 Q. Where did you go to work?

17 A. I went to work for an accounting firm.

18 Q. Do you recall when that would have been?

19 A. The dates are going to escape me. It's going to be
20 like '71. You know -- that's a guess.

21 Q. How long were you with this accounting firm?

22 A. It's -- it was less than a year.

23 Q. What was your job title at the firm?

24 A. Computer programmer.

25 Q. Do you recall the name of the firm?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

8

1 A. No.

2 Q. When you left the accounting firm, what was your next
3 job or what did you do?

4 A. I went to Philadelphia.

5 Q. Were you employed in Philadelphia?

6 A. Yes.

7 Q. Who was your employer?

8 A. Richardson Mints.

9 Q. Can you spell that last name?

10 A. I don't spell very well. Richardson, like Richard,
11 S-O-N, Mints, M-I-N-T-S.

12 Q. What did you do at Richardson Mints?

13 A. Data processing manager.

14 Q. What were your dates of employment at Richardson
15 Mints?

16 A. You know, I worked there about two years.

17 Q. Okay. As a data processing manager, what were your
18 primary duties?

19 A. I managed the data processing office.

20 Q. Okay. Did you have programmer's --

21 A. I also programmed. It was a small office.

22 Q. Were you the primary programmer?

23 A. Yes.

24 Q. Did you have employees under you?

25 A. Two.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

9

1 Q. What business was Richardson Mints in?

2 A. Manufacturing mints.

3 Q. Literally, candies?

4 A. Literally, candies.

5 Q. Okay. Again, what language or what system would you
6 have been programming in --

7 A. System 3, Model 10.

8 Q. Okay. If my timeline is correct, you would have left
9 Richardson Mints about 1975. Does that sound correct?

10 A. Close.

11 Q. Okay.

12 A. Maybe '74.

13 Q. '74 to '75?

14 A. Yeah.

15 Q. Where did you go from Richardson Mints?

16 A. Kansas.

17 Q. Okay. Were you employed in Kansas?

18 A. Yes.

19 Q. Who would your employer have been?

20 A. Western Fidelity Life Insurance Company.

21 Q. Where in Kansas were they located?

22 A. Wichita.

23 Q. What was your job title at Western Fidelity?

24 A. Data processing manager.

25 Q. How long were you with Western Fidelity?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

10

1 A. Several years.

2 Q. When you say several, define that. Is that more than
3 two, less than --

4 A. I'm thinking two years.

5 Q. Okay.

6 A. Approximately. Again, it's been a long time.

7 Q. That's fair. After a while your memory fades, doesn't
8 it?

9 A. (Witness indicating.)

10 Q. Do you recall how many employees you would have
11 managed?

12 A. I had two employees there.

13 Q. Did you perform programming also?

14 A. Yes.

15 Q. Again, what system would you have been programming in?

16 A. System 3, Model 10.

17 Q. Okay.

18 A. And we converted to a System 3, Model 8.

19 Q. Okay. Do you recall when you left Western Fidelity?

20 A. I don't recall the exact year. It's just --

21 Q. Okay. Did you have any significant -- between the
22 time you got out of the Air Force, because you said
23 you traveled, between the time you got -- you were in
24 San Diego. You left your job, and you left Western
25 Fidelity. Were there any times of significant

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

11

1 nonworking activity?

2 A. Define significant.

3 Q. More than 30 days.

4 A. That's -- I don't know. I don't think so but I don't
5 know.

6 Q. Did you attend any training, formal training, programs
7 or formal training schools, during any of this time we
8 have been talking about from the time you joined the
9 accounting firm until you went to -- left Western
10 Fidelity?

11 A. Again, define the word formal.

12 Q. Well, presented by a third party or a school where you
13 would have received a certificate?

14 A. No certificates.

15 Q. Okay.

16 A. I received training from IBM.

17 Q. So you did attend some IBM --

18 A. It was informal. That's why I wanted the word
19 defined.

20 Q. Describe to me when you say informal what would have
21 been the setting --

22 A. At the IBM Building in San Diego.

23 Q. Okay. Do you recall how long this training would have
24 lasted?

25 A. A couple of months.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

12

1 Q. Okay. Was this a formal school that you attended or
2 was it every other Tuesday type of thing? How was
3 that structured?

4 A. It was every day.

5 Q. Okay. Was it during the day or was it after --

6 A. During the day. It was part of the work/job, learning
7 a new computer system.

8 Q. Okay. So your employer at the time, the accounting
9 firm, paid you essentially to go to the IBM
10 building --

11 A. Yes.

12 Q. -- and be trained; is that correct?

13 A. Yes.

14 Q. And let's continue down this road. You left Western
15 Fidelity Life Insurance. What did you do after you
16 left Western Fidelity?

17 A. I went to a work for a company in Colorado.

18 Q. Where in Colorado would that have been?

19 A. Canyon City.

20 Q. What was the name of that company?

21 A. You know, I don't really recall. It was a new startup
22 company. And I don't know -- I don't know the name.

23 Q. Okay. How long were you with this company?

24 A. Not even a year.

25 Q. What business was this company in?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

13

1 A. Service bureau.

2 Q. When you say service bureau, what do you mean?

3 A. We performed services for other companies, primarily
4 data processing.

5 Q. Just so that I understand then, and the record
6 reflects, when you say data processing for other
7 companies, today we would call that outsourcing.

8 A. Yes.

9 Q. And what type of data processing services would you
10 have provided?

11 A. An example would be the scheduling system for the
12 Colorado school system.

13 Q. You said that you left after a year --

14 A. Less than a year.

15 Q. Approximately a year, less than a year. What was your
16 job title?

17 A. Systems designer/programmer.

18 Q. I know it's been a long time. Do you recall when you
19 would have left this company, the startup company?

20 A. Not really.

21 Q. Okay. My mental math says 1976 or '77, is that --

22 A. It's probably close. It's fair.

23 Q. Now, do you recall why you left that company?

24 A. They didn't pay me my bonus.

25 Q. Okay. To your knowledge, did this company continue in

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

14

1 existence?

2 A. I don't know.

3 Q. Okay. Obviously, if you weren't paid your bonus, you
4 must have decided to seek another employer. Where did
5 you go from there?

6 A. Iowa.

7 Q. Where in Iowa?

8 A. Waterloo.

9 Q. Who was your employer?

10 A. It was a hospital and, again, I don't remember the
11 name for some reason.

12 Q. Is there more than one hospital in Waterloo?

13 A. There is.

14 Q. Is there any way of identifying which hospital this
15 would be?

16 A. You know, probably would be. At the time it had about
17 300 beds --

18 Q. Would it been --

19 A. -- so it was a fairly large hospital.

20 Q. Would it be the largest one in Waterloo, Iowa?

21 A. Today, I wouldn't know.

22 Q. At the time?

23 A. Yeah, pretty close.

24 Q. What was your job title at the hospital?

25 A. Programmer.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

15

1 Q. How long were you at this hospital in Waterloo, Iowa?

2 A. About a year.

3 Q. As a programmer, did you manage any other persons or
4 were you --

5 A. No.

6 Q. Merely a programmer?

7 A. Merely a programmer.

8 Q. What computer programming system were you programming
9 in at that time?

10 A. System 3, Model 12.

11 Q. Again, I have asked you this before. Did you receive
12 any formal training, attend any classes, while you
13 were at Canyon City or while you were in Waterloo,
14 Iowa?

15 A. In Waterloo.

16 Q. And what type of classes would you have received?

17 A. IBM.

18 Q. Was this the type of classroom training --

19 A. Yes, it was.

20 Q. -- we talked about before?

21 A. There was an actual classroom training.

22 Q. Okay. Do you recall what type of class it was?

23 A. Interactive programming.

24 Q. Did you receive a certificate?

25 A. Yes, but I don't have a copy of it.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

16

1 Q. After this long I would be surprised --

2 A. I just wanted to clarify it.

3 Q. I guess nowadays it's popular to have people say that
4 they are certified in this or certified in that. Did
5 you have any kind of designation like that from IBM?

6 A. No.

7 Q. Where did you go from Waterloo, Iowa?

8 A. Miami.

9 Q. I assume that's Florida and not Ohio?

10 A. Yes.

11 Q. Do you recall when you went to Miami?

12 A. It would have been about '78, '77, '78.

13 Q. And who was your employer in Miami?

14 A. Dynamic Control.

15 Q. What would that business have been, that Dynamic
16 Control was in?

17 A. Software design, programming, software sales.

18 Q. What was your title with Dynamic Control?

19 A. Analyst/programmer/project leader.

20 Q. Now, when would you have left Dynamic Control?

21 A. In, I guess, late '78.

22 Q. So you were there for approximately a year to 18
23 months; is that correct?

24 A. Maybe -- I can't even tell.

25 Q. Okay.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

17

1 A. That would have been hard. They worked us to death.

2 It felt like ten years.

3 Q. Okay. Obviously, I know what a programmer is. I have
4 heard of the term analyst. When you say analyst, tell
5 me what you mean that to mean.

6 A. I would go to a client site, analyze their needs and
7 design software to meet those needs.

8 Q. So you would, for example, if it were a law office,
9 you would come in and determine what their issues
10 were, and then go back and design a program to meet
11 those?

12 A. Exactly.

13 Q. And you said project leader. Did that involve the
14 supervision of other employees?

15 A. Yes.

16 Q. Do you recall how many employees?

17 A. It would vary based on the project.

18 Q. I was going to ask you, what type of projects would
19 you have been the project leader on?

20 A. A dialysis system, a healthcare system of some sort, a
21 trucking system, the retirement system for the
22 southern district of Teamsters.

23 Q. Again, I don't -- just to understand, I assume that a
24 client such as the Teamsters would contact your
25 organization and then a team of people would go and

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

18

1 analyze the needs and design the software, is that --

2 A. Yes.

3 Q. -- accurate?

4 And would you have been the overall leader
5 of that team?

6 A. Yes.

7 Q. All right. Now, I think you said you left Dynamic
8 Control in late 1978?

9 A. Yes.

10 Q. Where did you go from there?

11 A. Florida Keys Memorial Hospital.

12 Q. Where is that hospital, or was it?

13 A. Key West, Florida.

14 Q. How long were you at Florida Keys?

15 A. I -- that's -- I really wasn't an employee. I was
16 like a -- they hired me as a contract employee, so I
17 worked there for -- with them for several years.

18 Q. First, when did you cease working for them?

19 A. You know, it's -- I really don't recall.

20 Q. Okay.

21 A. That's kind of hard.

22 Q. When you say contract employee, explain to me what you
23 mean by contract employee.

24 A. What I did was create programs for them to make them
25 more efficient.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

19

1 Q. Were you a W2 employee? Did you receive a --

2 A. I received -- initially, I received a W2 because they
3 had set my hours. Later on I was paid per hour as I
4 made them more efficient.

5 Q. And obviously creating your own obsolescence is one of
6 the issues with technology?

7 A. Exactly.

8 Q. I guess I want to explore this just a little bit.
9 Would you have had an office at the hospital?

10 A. My own office?

11 Q. Yes.

12 A. No.

13 Q. Well, would your work station have been at the
14 hospital, perhaps is a better way of saying it?

15 A. I had a desk.

16 Q. And did they expect you to be there -- you said they
17 set your hours initially -- during a normal work time?

18 A. Actually not. They just...

19 Q. What would your job title have been at the Florida
20 hospital?

21 A. Data processing manager.

22 Q. And how many employees would you have supervised?

23 A. Initially, or --

24 Q. Let's start with initially.

25 A. I believe there were 17 initially.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

20

1 Q. Obviously by your earlier comments that was reduced at
2 some point. What would have been the reduction?

3 A. To three.

4 Q. Do you recall over the course how long it took to
5 reduce from 17 to 3?

6 A. It was -- it was over -- I don't know the exact time
7 period, you know. It was -- probably more than a
8 year.

9 Q. When it was reduced to three, were you one of the
10 people that was reduced out of the job?

11 A. I was already working limited hours at that time.

12 Q. When you say limited, how many --

13 A. It was as needed.

14 Q. Okay. Would that have been more than 40 hours a
15 month?

16 A. Like I said, I can't tell you.

17 Q. Okay. Were they -- had they converted to paying you
18 on a 1099 at that point in time or were they still
19 paying you as W2?

20 A. I believe it was a 1099. You know, again, I don't
21 remember.

22 Q. Okay. Were you working for anyone else at the same
23 time?

24 A. Yes.

25 Q. Who were you working for?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

21

1 A. DePoo Hospital.

2 Q. Can you spell that, please, sir?

3 A. D-E-P-O-O, I hope.

4 Q. Where is that located?

5 A. Key West.

6 Q. When did you start working for DePoo Hospital?

7 A. In '79.

8 Q. What were you doing for them?

9 A. Designed their hospital system.

10 Q. Okay. When you say system, you are referring to the
11 computer system?

12 A. Yes.

13 Q. How long were you employed by them?

14 A. Until 1999.

15 Q. You were an employee?

16 A. I was never an employee. I will clarify that, sorry.

17 Q. And were you, I guess, an independent contractor?

18 A. Yes.

19 Q. Did you have a formal agreement, a written agreement
20 with DePoo Hospital?

21 A. To the best of my recollection, yes. I would not have
22 a copy of it.

23 Q. Going back to the other hospital in Key West, did you
24 have an employment agreement with them?

25 A. Yes. Again, I don't have a copy of it.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

22

1 Q. We have got the two hospitals in Key West. Were you
2 employed by anyone else during this same period of
3 time?

4 A. Yes.

5 Q. Who were you employed by?

6 A. Key West Fragrance.

7 Q. What kind of business would Key West Fragrance be?

8 A. Fragrance and cosmetics.

9 Q. Would it be a wholesaler, a retailer or a
10 manufacturer?

11 A. All of the above.

12 Q. I believe you referenced fragrances and cosmetics?

13 A. Yes.

14 Q. When did you become employed by Key West Fragrance?

15 A. At -- I'm guessing here, it would have been either '79
16 or '80.

17 Q. Okay. What would your position have been at Key West
18 Fragrance?

19 A. Systems design/programmer.

20 Q. Were you an employee of Key West Fragrance?

21 A. No.

22 Q. You were an independent contractor?

23 A. Yes.

24 Q. So I assume you wouldn't have supervised any employees
25 then at Key West Fragrance; is that correct, sir?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

23

1 A. No.

2 Q. Did you have a written agreement with Key West
3 Fragrance?

4 A. You know, I don't recall.

5 Q. I want to back up for just a minute. I guess we have
6 been talking about the period of time around 1979 to
7 1980?

8 A. Yeah.

9 Q. And I believe you said that you were -- you went from
10 Dynamic Control to Florida Keys Memorial Hospital in
11 late 1978, somewhere in there. You would have been an
12 employee for some period of time of Florida Keys
13 Memorial Hospital?

14 A. Yeah.

15 Q. And what I want to ask you is while you were an
16 employee of Florida Keys, were you also an independent
17 contractor for these other entities?

18 A. Yes.

19 Q. I just want to keep that straight in my mind.

20 A. Okay.

21 Q. While you were an employee of Florida Keys, would you
22 have been an independent contractor for anyone else?

23 A. For the hospital in Puerto Rico.

24 Q. What hospital was that?

25 A. Hospital San Rafael.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

24

1 Q. And when would you have began doing work for that
2 hospital?

3 A. Oh, from about '79.

4 Q. What would you have been doing for Hospital San
5 Rafael?

6 A. I installed a computer system.

7 Q. Now, did you have a written agreement with Hospital
8 San Rafael?

9 A. I believe so, yes.

10 Q. Again, do you have a copy of that?

11 A. No, sir.

12 Q. Okay. Were there any other entities while you were an
13 employee of Florida Keys that you would have been an
14 independent contractor for?

15 A. I -- I was but I don't remember the dates, so I don't
16 know when -- when I was doing work for Florida Keys,
17 clarify that.

18 Q. I want to focus in on, you were an employee of Florida
19 Keys for some period of time. You don't really recall
20 how long?

21 A. Again, the word employee, I don't see -- by employee,
22 do you mean was I told when to come or was I -- I'm
23 trying to clarify the word employee.

24 Q. Well, for my purposes I typically do it based upon, I
25 received a W2 --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

25

1 A. Okay.

2 Q. -- for that year.

3 A. I worked for Singleton Fleets in Key West. I don't
4 remember when. It was just another --you know, it
5 could have been '79, '80, '81.

6 Q. What was Singleton Fleets?

7 A. They handled shrimp boats.

8 Q. When you say handled, do you mean they operated shrimp
9 boats or --

10 A. They operated shrimp boats, they repaired them, they
11 bought fish.

12 Q. And what were your duties --

13 A. I designed their computer system.

14 Q. Now, again, did you have a written agreement with
15 them?

16 A. You know, I don't recall.

17 Q. Going back, backing up just a bit, I don't believe I
18 asked you this question, at Dynamic Control, what
19 computer system would you have been programming with,
20 or in?

21 A. A System 3, Model 15. Then a System 3, Model 34. And
22 then a System 3, Model 38. The 38 was a preliminary
23 machine. It wasn't really released to the public.

24 Q. When you refer to all of these, you are referring to
25 IBM; is that correct?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

26

1 A. Yes, sorry.

2 Q. And at Florida Keys Memorial Hospital, what system
3 would it have been?

4 A. It was a System 3, Model 34.

5 Q. DePoo Hospital, what you said, you worked with them
6 from '79 until '99 --

7 A. So, it was a lot of machines.

8 Q. I was about to say originally --

9 A. It was a 34.

10 Q. Then Key West Franchise, do you recall?

11 A. System 34.

12 Q. Okay. And Singleton Fleets?

13 A. System 34.

14 Q. Okay. Now, we are on my timeline, about 1981?

15 A. Could be, yeah.

16 Q. Between, I guess, your attendance at the IBM training
17 program at Waterloo, Iowa, and 1981, would you have
18 attended any more classes?

19 A. No, I don't think so. I really don't think so. I
20 didn't have time.

21 Q. Now, we mentioned Florida Keys as being an employer.
22 You said they paid you initially as a W2 employee.
23 Thereafter, you have reduced the staff to three and
24 they called you on an as-needed basis.

25 Have you been an employee of any entity

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

27

1 since your employment with Florida Keys Hospital?

2 A. You mean received a W2? Let me think. I don't think
3 I have. I don't recall but I don't think I have
4 received -- well, I will take that back. I received
5 W2s from my own corporation. Would that count?

6 Q. Well, yeah, we are going to delve into that, I guess.
7 Maybe I should say as any third-party entity, one that
8 is not an affiliate of yours?

9 A. Yeah, I believe so. I don't remember any.

10 Q. You do not remember any other than your own affiliated
11 entities?

12 A. Exactly.

13 Q. Let's talk about your affiliated entities. What would
14 those have been?

15 A. I don't understand the word affiliated.

16 Q. What corporations would you have been --

17 A. I --

18 Q. -- involved with?

19 A. The only corporation I had here would have been
20 Goldman & Goldman, Inc., which was...

21 Q. When was that entity incorporated?

22 A. You know, I think -- I have the corporate papers on
23 that, I can give you an exact date, and they are not
24 here but I believe it was 1990.

25 Q. What state was that --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

28

1 A. Michigan.

2 Q. What would have been the business of Goldman &
3 Goldman, Inc.?

4 A. You know, variety, I guess. I left -- it would have
5 been software, I don't remember exactly what it said
6 but we had a --

7 Q. Well, probably in your charter you had some language
8 to say, here is the business we think we are going to
9 do.

10 A. You know, I really don't recall how it was worded.
11 You know, we can ask, or we can look at the papers if
12 we need to.

13 Q. Sure. I guess what I'm asking you is, what business
14 did Goldman & Goldman, Inc. actually do?

15 A. Software design.

16 Q. And who were the shareholders of Goldman & Goldman,
17 Inc.?

18 A. Joel Goldman.

19 Q. Other than you, Mr. Goldman, have there ever been any
20 other shareholders of Goldman & Goldman, Inc.?

21 A. No.

22 Q. Who were the directors, the members of the board of
23 directors of Goldman & Goldman?

24 A. Jaime Larsen.

25 Q. Jaime, is that I-M-E?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

29

1 A. Yes. L-A-R-S-E-N.

2 Q. L-A-R-S-E-N?

3 A. And William Barry.

4 Q. Who is Jaime Larsen?

5 A. She was my wife.

6 Q. Who is Mr. Barry?

7 A. He was a long-time associate.

8 Q. Okay. Let's talk about the board of directors at
9 Goldman & Goldman. When -- I guess, let me rephrase
10 that.

11 Are you still a member of the board of
12 directors of Goldman & Goldman?

13 A. Yes.

14 Q. Is that still an active corporation?

15 A. Yes.

16 Q. Have you been a member since its organization or its
17 incorporation?

18 A. Yes.

19 Q. And Ms. Larsen, I understand it, is your wife who has
20 passed away?

21 A. Yes.

22 Q. Was she a director at the time of incorporation or --

23 A. Yes.

24 Q. Did she continuously serve until she died?

25 A. Yes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

30

1 Q. Just for my notes, when did she pass away?

2 A. In 1999.

3 Q. Mr. Barry, would he have been a member of the board of
4 directors at the incorporation?

5 A. Yes.

6 Q. Is he still a member of the board of directors?

7 A. Yes.

8 Q. Are there any other members of the board of directors
9 of Goldman & Goldman?

10 A. I don't know if we officially added anybody back after
11 my wife deceased.

12 Q. Does your corporation maintain a minute book?

13 A. If it did, my attorney would handle that.

14 MR. DENNEN: I would ask, Brad, if we could
15 get a copy of the minute book of Goldman & Goldman,
16 Inc.?

17 MR. SMITH: That's fine.

18 MR. DENNEN: That would be Exhibit Number
19 200.

20 MR. SMITH: If it exists.

21 MR. DENNEN: With the qualification, if it
22 exists.

23 THE WITNESS: Right.

24 MR. DENNEN: And perhaps if it doesn't
25 exist, a copy of the charter bylaws and corporate

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

31

1 minutes, to the extent Mr. Goldman has those.

2 BY MR. DENNEN:

3 Q. Now, you mentioned -- well, let's back up.

4 Who serves as president of Goldman &
5 Goldman, Inc.?

6 A. That would be me.

7 Q. Okay. Is there a secretary for the corporation?

8 A. Currently?

9 Q. Yes.

10 A. I don't know if we put it in the records or not.

11 Q. Okay. Who is the secretary then, even if it's de
12 facto?

13 A. It would be Susan Barnes.

14 Q. Who is Susan Barnes?

15 A. My girlfriend.

16 Q. When would Ms. Barnes have become secretary?

17 A. I wouldn't remember. For a couple of years. I don't
18 know.

19 Q. 2002, 2003?

20 A. Yes.

21 Q. Somewhere in there?

22 A. Somewhere like that. Again, it would be informal, if
23 anything.

24 Q. Does Mr. Barry have a position as an officer with the
25 corporation?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

32

1 A. Yeah, I believe he was treasurer. I'm not really sure
2 if that's what we gave him.

3 Q. Okay. Whatever position he has held, has he held that
4 position --

5 A. Yes.

6 Q. -- since the organization of the company?

7 A. Yes.

8 Q. You have done a real good job. Let me finish my
9 question so it's accurately reflected.

10 Anyone else who serves as an officer of
11 Goldman & Goldman, Inc.?

12 A. You know, not to my recollection.

13 Q. Does Goldman & Goldman, Inc. have any employees?

14 A. Yes.

15 Q. How many employees?

16 A. Two.

17 Q. Who are those?

18 A. Marian Larsen,

19 Q. L-A-R-S-E-N also?

20 A. Yes.

21 Q. And who else?

22 A. And myself.

23 Q. What are Ms. Larsen's, Ms. Marian Larsen's, duties?

24 A. Keeps the books.

25 Q. Okay. Other than -- well, rephrase that.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

33

1 What is the maximum number of employees
2 Goldman & Goldman would have had since its
3 organization in 1990?

4 A. W2 employees?

5 Q. Yes, sir.

6 A. Two or three, I don't know if we ever even had three.
7 Jamie was an employee before her mother, and I don't
8 recall if we had any more.

9 Q. Let me -- I appreciate what you are saying. Marian
10 Larsen is then your stepdaughter, is that correct, or
11 your daughter?

12 A. Marian Larsen is my mother-in-law.

13 Q. Mother-in-law, I'm sorry. And you are saying that
14 your wife, your deceased wife, may have been an
15 employee?

16 A. She was.

17 Q. She was an employee?

18 A. Yes.

19 Q. But other than your mother-in-law, your wife and you,
20 to your knowledge, has the company had any other
21 employees?

22 A. I don't believe we ever issued any other W2s.

23 Q. Okay. Other than Goldman & Goldman, Inc., have you
24 had any other business entities? When I say entity,
25 corporation, partnerships, now we have something

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

34

1 called a limited liability company, any other
2 entities?

3 A. I guess I need that clarified. If I was given stock
4 in a company, would that be considered --

5 Q. That would be considered to be an entity.

6 A. Okay. In 1989, I was given 50 percent stock in a
7 company called Green Tree.

8 Q. Okay. Do you know the full name of Green Tree?

9 A. I think it was Green Tree, Inc.

10 Q. Okay. Do you know where that corporation was
11 incorporated?

12 A. It was Michigan.

13 Q. Okay. Is it still in existence?

14 A. I don't believe so.

15 Q. You used the past tense of "was Michigan,"

16 A. Yes.

17 Q. Either -- the natural is it either ceased to exist or
18 else it changed to a different state.

19 A. It just was never used.

20 Q. Did it ever engage in any business?

21 A. No.

22 Q. Who would have been the other shareholders of Green
23 Tree?

24 A. Alan Ladd.

25 Q. Was he the only shareholder?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

35

1 A. Yes.

2 Q. When you say was given to you, do you know why
3 Mr. Ladd gave you this stock?

4 A. We were going to engage as partners in a venture.

5 Q. What would have been the nature of that venture?

6 A. Computerized billing systems for healthcare.

7 Q. Okay. Other than Green Tree, which you said never
8 engaged in any business, would there have been any
9 other business corporation that you would have been a
10 shareholder of?

11 A. No, I don't believe so. I don't think so.

12 Q. Okay. Even let me take it a step further, Goldman &
13 Goldman was incorporated in, I believe you said, 1990
14 in the State of Michigan?

15 A. Yes.

16 Q. And you said it continues in existence today?

17 A. Yes.

18 Q. Prior to 1990, would you have engaged in business as
19 Goldman & Goldman?

20 A. No.

21 Q. Would you have used in your business any other names
22 to distinguish yourselves?

23 A. I used the initials JSM.

24 Q. Okay. Was it just JSM?

25 A. Yes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

36

1 Q. What did JSM stand for, if anything?

2 A. Joel, Star and Michelle.

3 Q. Star, S-T-A-R?

4 A. Yes.

5 Q. Who are Joel, Star and Michelle?

6 A. Michelle is my daughter and Star was sort of a term of
7 endearment for my first wife.

8 Q. I assume you are Joel?

9 A. You assume correctly.

10 Q. Would you have said computing systems, use any other
11 adjectives with this name?

12 A. Possibly.

13 Q. Do you recall using any?

14 A. I could have. I mean, I recall I used something. I
15 could have said JSM Computer Systems, JSM Key West.

16 Q. Okay. This entity, did you ever incorporate it,
17 formally organize it?

18 A. No.

19 Q. When did you begin using the name JSM or some
20 derivative of that?

21 A. It would have been in '79.

22 Q. And when did you cease using JSM, or derivative?

23 A. You know, I really don't recall. Probably after my
24 divorce.

25 Q. When was your divorce?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

37

1 A. You know, I actually don't have the exact date.

2 MR. GIVENS: I'm going to take a break.

3 MR. DENNEN: Why don't we do that right
4 now, Tom.

5 (A recess was taken)

6 MR. DENNEN: We are back from our break.

7 BY MR. DENNEN:

8 Q. Mr. Goldman, before we took a break we were talking
9 about your various -- I guess the corporation Goldman
10 & Goldman and we were talking about JSM. I just want
11 to refresh my own recollection, I believe you said
12 JSM, you ceased using JSM when you got divorced; is
13 that correct?

14 A. That would be -- that would make sense to me.

15 Q. Again, I think I asked this question but I want to ask
16 it again, do you recall when that divorce would have
17 occurred?

18 A. You know, it would be a matter of record in Key West.
19 I got divorced there.

20 Q. Not to belabor the point, would it have been the
21 middle '80s, late '80s, early '90s?

22 A. It was sometime in the '80s. Again, not the exact
23 date.

24 Q. From that time, whatever date that is, and we can
25 figure out what that is, until you incorporated

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

38

1 Goldman & Goldman, Inc., did you use any other trade
2 names or business names, or anything like that?

3 A. Not that I recall.

4 Q. Now, JSM, when you used the name JSM, what business
5 was JSM in?

6 A. Software.

7 Q. When you say software, what do you mean, sir?

8 A. Design, implemented, contracted, whatever.

9 Q. When I say contracted, I guess I am thinking of
10 essentially contract as an independent contractor who
11 has a contract with a third party. Is that the use
12 you are making of that?

13 A. Yeah.

14 Q. Did JSM ever sell a product?

15 A. Not under that name.

16 Q. Okay. What name would JSM have sold a product under?

17 A. The only product -- are you referring to that time
18 period?

19 Q. I'm referring to the period of time when you used the
20 name JSM, which have been 1979 to sometime in the
21 '80s.

22 A. I would have sold the product under my name.

23 Q. Now, again, I don't -- I'm trying to get this in my
24 mind and sometimes my mind can be a little logical and
25 sometimes it isn't.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

39

1 For example, Florida Keys Hospital, would
2 you have contracted with them as JSM?

3 A. No.

4 Q. DePoo Hospital, would that have been JSM?

5 A. No.

6 Q. Key West Fragrance, would that have been JSM?

7 A. No.

8 Q. And Hospital San Rafael in Puerto Rico, would that
9 have been JSM?

10 A. No.

11 Q. And Singleton Fleets, would that have been JSM?

12 A. No.

13 Q. And you said that pretty emphatically. So what would
14 have been the distinction between these entities and
15 the other ones that JSM contracted with?

16 A. I would clarify, JSM did not contract with anybody. I
17 thought I said that.

18 Q. Oh, okay. I misunderstood you then. I'm sorry.

19 A. I think you need to look --

20 Q. Let's go back to JSM's business.

21 A. Okay.

22 Q. What was JSM's business, tell me again, if you would,
23 sir.

24 A. JSM was just a name. I guess I really don't
25 understand the question there.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

40

1 Q. Well, that's fair, I'm glad you made that statement
2 because you and I may be saying the same thing on
3 different levels.

4 When you say JSM was just a name, I was
5 assuming that, for example, if Joel Goldman did
6 contract programming work for the Dykema law firm,
7 that Dykema would receive an invoice that said at the
8 top JSM, or something to that nature. I'm trying to
9 understand what exactly you used JSM for.

10 A. Maybe -- at the time I thought about incorporating it
11 as a name, but never did. Maybe that's the best
12 scenario.

13 Q. Would you have business cards that had JSM on them
14 that you would give to people?

15 A. No.

16 Q. So as far as your customers were concerned, JSM did
17 not exist?

18 A. Exactly.

19 Q. Okay.

20 A. It was a reference point for myself.

21 Q. Okay. That's fair enough. It was not a name that you
22 gave to third parties?

23 A. Exactly.

24 Q. Okay. Now we understand each other.

25 Again, I don't mean to belabor the point,

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

41

1 but JSM, there wouldn't be anybody out there who would
2 have received a paycheck from JSM or there wasn't a
3 JSM checkbook --

4 A. No.

5 Q. Or anything of that nature?

6 A. No.

7 Q. Now, okay, in that case, I think we can go on and
8 forget about JSM.

9 So Joel Goldman, individually, entered into
10 these contracts with the various entities we have
11 talked about, Hospital San Rafael?

12 A. Yes.

13 Q. Hospital DePoo, the shrimp fleet, that name is
14 Singleton Fleets, that would have been with you
15 individually, is that correct, sir?

16 A. Yes.

17 Q. Now, when would you have begun doing this contract
18 work individually?

19 A. What time frame are you talking about?

20 Q. Well --

21 A. Are we strictly talking in the Key West time frame?

22 Q. I guess before you moved to Key West, did you do any
23 independent contracting program on the side?

24 A. Yes.

25 Q. Has that always been something that you have done?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

42

1 A. Yes.

2 Q. After you moved to Key West, though, that became your
3 primary business, correct, was independent contract
4 programming?

5 A. Yes.

6 Q. That's what I'm talking about.

7 A. Okay.

8 Q. So let's start then.

9 A. From that time period.

10 Q. From that time period, that's a good reference point.
11 You moved to Key West, it looks like, sometime in
12 1978?

13 A. Right.

14 Q. Give or take a little bit.

15 A. Right.

16 Q. Again, just for my own reference, do you have any
17 specific -- was it '78 or '77, do you specifically
18 recall?

19 A. I don't have that exact date. It was in that time
20 frame.

21 Q. But you don't have any reference that it was March of
22 1978?

23 A. No, I couldn't give you that date, that exact --

24 Q. When did you leave Key West?

25 A. You know, that's kind of a -- can't really answer. I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

43

1 went back and forth to Key West for -- until 1999. So
2 I never really left.

3 Q. When you say back and forth to Key West, what do you
4 mean? Did you have another home somewhere else?

5 A. That I owned?

6 Q. Well, I don't think home ownership is a requisite to
7 have another home. Obviously, you came to Michigan at
8 some point in time. When you say back and forth, are
9 you referring to Michigan and Key West?

10 A. I lived other places also.

11 Q. Where else did you live?

12 A. Georgia, Puerto Rico.

13 Q. Where else?

14 A. I think that's -- I don't recall any other -- well,
15 Miami, sorry about that.

16 Q. You didn't name Michigan. Was Michigan in that list?

17 A. Yeah, sorry. I thought that was assumed.

18 Q. And it was but I wanted to make sure. Unfortunately,
19 when she is taking down the record --

20 A. Okay.

21 Q. I think you and I are on the same wavelength, so
22 that's good.

23 A. All the other places I worked I lived there,
24 obviously.

25 Q. Again, I went to get some reference points. You said

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

44

1 you left Key West in 1999, went there in approximately
2 1978, '79, in that neighborhood. Did you own a home
3 in Key West during this period of time?

4 A. No.

5 Q. Did you receive your mail in Key West during this
6 period of time?

7 A. Yes.

8 Q. When you were in Georgia -- when were you in Georgia?

9 A. You mean physically living there?

10 Q. Yes.

11 A. Again, define the word living. You know, I didn't
12 live there on a full-time basis. It was just like
13 a --

14 Q. You tell me.

15 A. I don't -- I don't -- living there is -- I was there
16 for some times. I could have been there a week out of
17 three months and the next time I could have been there
18 a month. I really didn't stay there.

19 Q. Do you recall what time period you would have been
20 spending time in Georgia?

21 A. I'm thinking it was between '82 and about '86 and '87.

22 Q. Where in Georgia would that have been?

23 A. St. Simons Island.

24 Q. And with respect to Puerto Rico when you were, I
25 guess, spending time in Puerto Rico, what time frame

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

45

1 would that have been?

2 A. From '79 up until about '86 and, again, that's a
3 guess.

4 Q. Sure. It's been a long time.

5 A. Yeah.

6 Q. We would all agree with that. And Miami, Florida?

7 A. It was just in the time I worked at Dynamic, and I
8 actually owned a home there at that time.

9 Q. But that was before you moved to Key West, so that
10 would have been 1978, '77, correct?

11 A. Yeah.

12 Q. Because you maintained a residence after that?

13 A. Yes.

14 Q. When did you cease having that residence?

15 A. I rented it out for a time period and I don't remember
16 when I sold it. Again, it would have been a matter of
17 record.

18 Q. Would it have been the mid-'80s?

19 A. You know, I don't remember. I sold it to the people I
20 rented it to.

21 Q. Sure. And Key West, you know, being a southerner I
22 refer to my home place as being that place where I
23 keep going back to even though I may be living
24 somewhere else. Would you have considered Key West to
25 be the home place in my vernacular?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

46

1 A. Off and on.

2 Q. That's fine. Then Michigan, where in Michigan did you
3 reside?

4 A. Initially, in Trufant.

5 Q. Can spell that for me, please, sir?

6 A. T-R-U-F-A-N-T.

7 Q. When did you reside in Trufant?

8 A. '86 or '87.

9 Q. Were there any other communities where you would have
10 resided in Michigan?

11 A. Grand Rapids.

12 Q. When would that have occurred?

13 A. That would have been about, again, I don't know the
14 exact time frame, from '87 to about '90, maybe '88.
15 Again, I don't have that exact date.

16 Q. Okay. Anywhere else in Michigan?

17 A. My current home.

18 Q. Where is that?

19 A. It's in Canadian Lakes.

20 Q. When did you move there?

21 A. I purchased that in -- it's either '90 or '91.

22 Q. You resided in Canadian Lakes, Michigan since 1991 and
23 continuously? I guess you continued going back to Key
24 West but you said that was until 1999?

25 A. Yeah.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

47

1 Q. When you would go back to Key West during this time
2 period, was that for a week, a month, longer periods
3 of time or was it just, it depended?

4 A. Usually the winter.

5 Q. That's fair enough. Since 1999 you have resided
6 solely in Canadian Lakes, Michigan; is that correct?

7 A. Yes.

8 Q. All right. Goldman & Goldman, does it have a business
9 office?

10 A. Third floor of my house.

11 Q. Has that been the business office since 1990 or '91?

12 A. Yes.

13 Q. Has it ever had any other offices other than at your
14 home, wherever that might be?

15 A. No.

16 Q. During the time that you were -- let's say, from 1979
17 until 1990 when Goldman & Goldman was incorporated,
18 would you have had any offices when you were, I guess,
19 without a corporation, other than at a home office?

20 A. I don't -- I guess I don't understand the question.
21 Did I work out of someplace or --

22 Q. We are in a rented office, obviously, at your
23 attorney's office. Did you rent any other --

24 A. I did not rent any spaces or anything like that or --

25 Q. Would you have received mail at that location other

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

48

1 than at your home for your business entity?

2 A. Not that -- I don't really think so.

3 Q. Okay. Would you -- other than going to the customer's
4 location, would you have had an office anywhere that
5 you would have utilized?

6 A. Well, I had a place in Puerto Rico but, again, the
7 word office, I didn't really work out of anyplace.

8 Q. When you say a place in Puerto Rico, explain that to
9 me a little bit, what you mean.

10 A. I had a clothing store, so I don't know if I -- I
11 didn't know if that was relevant.

12 Q. Well, I mean, when did you have the clothing store?

13 A. From about '84 to about '86 or '87, I think. The
14 dates are really kind of vague.

15 Q. Sure. Did that clothing store have a name?

16 A. Ultimo.

17 Q. You have to spell that one for me, for sure.

18 A. U-L-T-I-M-O.

19 Q. Where that was located?

20 A. In the Catano, in Puerto Rico.

21 Q. Okay. What kind of clothing did your store sell?

22 A. Men's.

23 Q. Was that your full-time occupation?

24 A. No, no. It was a venture. Can I put it that way? It
25 was a venture.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

49

1 Q. Were you an investor only or did you --

2 A. No, I was an investor.

3 Q. I guess, to ask that question again, did you work in
4 the store in any capacity or work with that business
5 in any capacity?

6 A. I -- as an employee or --

7 Q. Did you devote any amount of time --

8 A. I did put a little time in it, yes.

9 Q. Okay. I believe, kind of, you referenced that you
10 would have worked in that store in your other
11 business?

12 A. Occasionally, I would have worked through a computer
13 terminal so I could dial in to clients.

14 Q. Sure. Was this store, was it an incorporated entity?

15 A. No.

16 Q. Who were the other investors?

17 A. No one.

18 Q. Were you the sole owner?

19 A. (Witness indicating.)

20 Q. Did you have any employees in the store?

21 A. I had some contract employees.

22 Q. I guess to borrow a phrase, who was minding the store
23 for you? Did you have someone who was the manager or
24 maybe that was the problem?

25 A. I'm sorry. Yeah, there was -- yeah, there was

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

50

1 somebody managing the store.

2 Q. Ultimately, I guess you made the decision to shut down
3 the store?

4 A. Yeah.

5 Q. Any other business ventures that you have been
6 involved in since 1979 up through the present?

7 A. No, I don't think so.

8 Q. Let's talk about from 1979 until, I guess, 1990 when
9 Goldman & Goldman was incorporated.

10 A. Okay.

11 Q. During that time what would you have said your primary
12 business was?

13 A. Designing software.

14 Q. Who were your customers?

15 A. Primarily hospitals.

16 Q. During this period of time, how many hospitals would
17 you have had as customers?

18 A. Quite a few. Do you need a list of names or --

19 Q. Probably, ultimately, I will want a list of names but
20 at this point in time, would it have been more than
21 20?

22 A. Between the time frame of when?

23 Q. '79 and '90.

24 A. I'm going to say probably 10.

25 Q. Okay.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

51

1 A. I don't know if that's an exact figure.

2 Q. We have already identified two hospitals in Key West
3 and one in Puerto Rico. Do you recall any of your
4 other hospital customers?

5 A. Georgia. That would be -- do you want --

6 Q. If you have that name that --

7 A. Henry General.

8 Q. Where is that located?

9 A. Stockbridge.

10 Q. Okay. Any others come to mind?

11 A. I don't know the name but I can give you the location.

12 Q. Sure.

13 A. It would be Hinesville.

14 Q. Hinesville, Georgia?

15 A. Yep.

16 Q. Okay.

17 A. Claxton, Georgia. You can put a fruitcake next to
18 that.

19 Q. What else?

20 A. Canton, Georgia.

21 Q. Okay.

22 A. Cummings, Georgia. I don't remember if this was
23 Evanston or Evans, home of Stucky's.

24 Q. Okay. Any others that come to mind?

25 A. Texas. Angleton, Texas.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

52

1 Q. Is that E-N?

2 A. A-N. Livingston, Texas. Taft, Texas.

3 Q. Any others?

4 A. Michigan. Did I get through ten yet? Must have been
5 more. Mecosta in Big Rapids. Now, okay, let's stop,
6 yeah. Kelsey in Lakeview.

7 Q. You are saying Kelsey Hospital in Lakeview, Michigan?

8 A. Right. South Haven Hospital. The hospital in
9 Marshall, I don't remember the name.

10 Q. Let me stop you there, South Haven Hospital, where is
11 that located?

12 A. South Haven. I'm giving you locations again, and the
13 hospital name could change, which they do.

14 Q. I assume most of these communities, there is only one
15 hospital?

16 A. Yeah, they are small.

17 Q. When you say small, what is the bed range?

18 A. Generally, under 100 beds.

19 Q. Any others that come to mind?

20 A. Well, the Puerto Rico Hospital.

21 Q. We have already got Hospital San Rafael.

22 A. I figured you wanted the whole list.

23 Q. Let's do that. Puerto Rico.

24 A. You have DePoo and Florida Keys.

25 Q. We have got roughly -- that's actually 16 hospitals.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

53

1 Now, they would have been customers of Joel

2 Goldman sometime between '79 and 1990, is that --

3 A. Clarification, they were not -- I usually handled
4 it -- the hospitals I dealt with I usually handled
5 through a third party.

6 Q. Tell me about that relationship. First, who is that
7 third party?

8 A. Well, it would depend on the location.

9 Q. Why don't you tell me about the relationship, and we
10 can get into that?

11 A. I would not market -- I didn't market directly. That
12 was not my job.

13 Q. Help me understand. Give me an example of one of
14 these hospitals where there would have been a third
15 party involved?

16 A. I would design software but I would not go out and try
17 to sell software to a party. Somebody would come to
18 me and say I have a hospital system for you, and they
19 would, essentially, have the contract with the
20 hospital and then they would pay me.

21 Q. Do you recall who those third parties were?

22 A. One would have been Tom McDougal.

23 Q. Anyone else?

24 A. Boy, I think it's also Tom Kasnak.

25 Q. Spell that last name, please, if you can.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

54

1 A. I couldn't even begin.

2 Q. Who else?

3 A. I guess they are the only ones that I...

4 Q. Let's use Mr. McDougal, for example.

5 A. Okay.

6 Q. Mr. McDougal would have a contract with -- do you
7 recall which hospital Mr. McDougal would have had a
8 contract with?

9 A. It would have been, like, Henry General.

10 Q. Okay. Henry General would enter into a contract with
11 Mr. McDougal?

12 A. Right.

13 Q. Would that be him personally?

14 A. At that point I really didn't know. I had a contract
15 with Mr. McDougal to receive monies for those systems.
16 I do not have a copy of that contract.

17 Q. I guess, what would the hospital ask Mr. McDougal to
18 do?

19 A. Provide a system for their hospital.

20 Q. And Mr. McDougal would then contact you and would you
21 then write a system for that hospital?

22 A. I already had a system designed.

23 Q. Would you then sell that to Mr. McDougal who would
24 resell it to the hospital?

25 A. We had an agreement where he would pay me a fee per

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

55

1 installation.

2 Q. Do you recall what that fee was?

3 A. It would vary based on the percentage of the sale.

4 Q. Do you recall what that percentage was?

5 A. Initially?

6 Q. Yes.

7 A. 50 percent.

8 Q. Obviously, it must have changed at some point? What
9 did it become?

10 A. What did it try to become or what did it become?

11 Q. My question is, what did it become?

12 A. It became nothing. We went our separate ways.

13 Q. Okay. How many hospitals would Mr. McDougal have
14 sourced, that's probably my word?

15 A. The initial Georgia and Texas hospitals.

16 Q. And when did you terminate your relationship with
17 Mr. McDougal?

18 A. You know, I -- it's going to be, like, '85 or '86, and
19 I'm real sketchy on that date.

20 Q. When did you begin your relationship with
21 Mr. McDougal?

22 A. I thinking it was '82. Again, I'm sketchy on that
23 date. I can...

24 Q. What reference would help you remember that better?

25 A. The first installation would have been Henry General,

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

56

1 so...

2 Q. Now, I guess from the hospital's perspective, would
3 they have known that you were involved in this
4 process, this project?

5 A. Yes.

6 Q. How would they have known?

7 A. Well, they paid me for any additional programming
8 directly.

9 Q. Let me back up in the process. Who would have
10 installed the software onto the hospital's system?

11 A. I was involved in every installation.

12 Q. What was your involvement?

13 A. I either helped or totally installed every system.

14 Q. Now, did you have a formal kind of maintenance
15 agreement with the hospital or -- how did they know to
16 call you?

17 A. It was the nature of the way we set up the agreements
18 with the facilities.

19 Q. Was there a maintenance agreement as part of that
20 agreement?

21 A. There was. I -- it wasn't directly with me but it
22 was...

23 Q. When you say it wasn't directly with you, help me
24 understand what you are saying.

25 A. It was a concept. I would always be there to help

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

57

1 them if they couldn't get relief from the other party.

2 Q. Now, when you say get relief from the other party, are
3 you referring to Mr. McDougal?

4 A. Yes. If they had a question, they would call him
5 first, and me second.

6 Q. Just a scenario, I'm in the hospital data processing
7 center and the system is not working. Would I pick up
8 the phone and call Mr. McDougal first?

9 A. Yes.

10 Q. And then how would I know to call you?

11 A. If your problem didn't get solved.

12 Q. Did Mr. McDougal have the ability to solve whatever
13 the problems were?

14 A. He was supposed to.

15 Q. When the customer came to you, how did you get paid
16 for that advice or that service, or maybe you didn't?

17 A. I got paid on a per hour basis.

18 Q. Did you send an invoice to Mr. McDougal or to the
19 customer?

20 A. When they called me directly, I would deal directly
21 with the customer.

22 Q. When you said they call you directly, would
23 Mr. McDougal call you with questions --

24 A. Yes.

25 Q. -- about doing things?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

58

1 What about -- you have referenced
2 additional programming. Did you create updates for,
3 like, Henry Hospital?

4 A. Yes, and custom programming.

5 Q. Now, the updates, specifically, were those released in
6 the computer software terms through Mr. McDougal?

7 A. Some were.

8 Q. Why were not all of them released through
9 Mr. McDougal?

10 A. You know, I don't really recall.

11 Q. Was that a part of his contract with the hospital, to
12 provide updates?

13 A. You know what? I really didn't see his contracts with
14 the hospital.

15 Q. I guess that gets me back to my question. You said
16 you did custom programming for the hospital as well,
17 Henry Hospital?

18 A. Yeah.

19 Q. Would that have been at Mr. McDougal's request?

20 A. Usually it was at the hospital's request.

21 Q. I asked this before, how would the hospital know to
22 call you? Would that be basically Mr. McDougal would
23 say you need to call Mr. Goldman?

24 A. No, they all knew to call me.

25 Q. Do you know how they knew to call you?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

59

1 A. I told them.

2 Q. Okay. When you were on premises doing installation,
3 is that when you told them?

4 A. Yes.

5 Q. Did you have -- I guess, do you have contact with the
6 customer during the sales process?

7 A. The only contact I would have had is usually to give
8 them a demo. You know, when we demonstrated the
9 software, I would do the demonstration.

10 Q. Do you know where Mr. McDougal is now?

11 A. No.

12 Q. When is the last recollection you have of his
13 whereabouts; do you recall?

14 A. When we terminated our agreement.

15 Q. Do you know where he was located then?

16 A. Atlanta, I believe.

17 Q. Now, did he have a corporation or a business name that
18 he used or was he just an individual?

19 A. You know, I think he did, and I don't really have the
20 name of that.

21 Q. If you wanted to get in touch with Mr. McDougal, do
22 you know of any means that you could utilize to get in
23 touch with Mr. McDougal?

24 A. No.

25 Q. After you terminated your relationship with

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

60

1 Mr. McDougal, did your relationship continue with the
2 hospitals that Mr. McDougal had brought to you?

3 A. Some of them.

4 Q. I believe you said you never saw the contract between
5 Mr. McDougal and these hospitals, is that correct,
6 sir?

7 A. To the best of my recollection, I don't remember
8 seeing them.

9 Q. Do you have a copy or would you have a copy of any of
10 those agreements?

11 A. I know surely not.

12 Q. Did you have a written agreement with Mr. McDougal?

13 A. You know, I don't have a copy of it, so I believe I
14 did but I don't have a copy of it.

15 Q. So you believe you had one at one time, you no longer
16 have that?

17 A. Right.

18 Q. Why do you no longer have that agreement?

19 A. I think I moved too many times.

20 Q. Did you prepare that agreement or did Mr. McDougal
21 prepare the agreement?

22 A. Like I said, he would have had it prepared.

23 Q. Would you have had that agreement reviewed by an
24 attorney?

25 A. I would have at the time. I know the second one

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

61

1 was...

2 Q. When you reference the second one --

3 A. That was the falling out. There was a second
4 agreement he requested me to sign, and that's when we
5 no longer -- we parted ways.

6 Q. And you have referenced he wanted a change in the
7 percentage. Were there any other details he wanted
8 changed that you didn't agree with?

9 A. I didn't bother reading it after the percentage
10 change.

11 Q. Now, on the percentage, 50 percent, roughly, what
12 would have been the compensation you would have
13 received under the agreement with these hospitals?

14 A. It was minimum of \$10,000 per sale.

15 Q. Was there a maximum?

16 A. Plus installation costs and expenses.

17 Q. Was there a maximum?

18 A. No.

19 Q. Roughly, what would have been the installation cost
20 and expenses on an ordinary basis?

21 A. 30, 40,000. It just depended on the facility. It's
22 kind of hard to tell.

23 Q. Are you saying that you would have incurred 30 or
24 \$40,000 in installation costs?

25 A. Possible -- depending on what system they had prior,

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

62

1 depending on what they wanted done, if they wanted
2 their information transferred. There is a lot of
3 variables, so the price was variable.

4 Q. Would that have been part of your contract with
5 Mr. McDougal or did you have a separate contract with
6 the hospital?

7 A. It was on a time-and-materials basis.

8 Q. I understand that, but was that contract with
9 Mr. McDougal or was it with the hospital entity?

10 A. It was the hospital had their choice to -- they could
11 have contracted him, they could have contacted me. It
12 was the hospital's choice.

13 Q. So did you have separate agreements with these
14 hospitals, separate written agreements or oral
15 agreements?

16 A. It was oral agreements.

17 Q. Okay.

18 A. Usually it was all done on a handshake.

19 Q. Did you ever have a written agreement with any of
20 Mr. McDougal's hospitals?

21 A. To the best of my recollection, no.

22 Q. You would have billed on an hourly rate for -- what
23 was that hourly rate?

24 A. In the early '80s, it would have been -- I think it
25 was like 40 bucks an hour.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

63

1 Q. Did that increase in this period of time we have been
2 talking about between --

3 A. To 75.

4 Q. So you are saying, and I just want to understand, and
5 I didn't bring a calculator with me, but at \$40 an
6 hour, that's 1,000 hours it would have taken to
7 install this program?

8 A. You know, the word installation, we need to clarify
9 that term maybe.

10 Q. Tell me when you say installation, what you mean.

11 A. You know, you have a program and it starts running.
12 But then over a time period, let's say six months, you
13 would improve it or make changes for the customer. So
14 it's -- or it could be a year.

15 Q. You are talking about making specific improvements
16 that the customer requested?

17 A. Exactly.

18 Q. Not the actual installation of the program onto the
19 machine?

20 A. Right. The installation would be very quick and then
21 as they used the software, they would know what
22 questions to ask.

23 Q. I guess, you know, you said 30,000 to 40,000, again,
24 excuse me, I'm doing the math right now, so that would
25 be 400 hours of installation at \$75 an hour so 10

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

64

1 weeks, I guess, 10 workweeks. Did you --

2 A. I don't know. Programmers don't work in the
3 same -- you know, like it could be 12 hours a day, 14
4 hours. You don't stop, you don't punch a time clock
5 and start at 8:00 and get done at 5:00.

6 Q. Okay.

7 A. It's like an attorney.

8 MR. GIVENS: I have to take another break,
9 I'm sorry.

10 MR. DENNEN: We are going to go on.

11 BY MR. DENNEN:

12 Q. Now, you said Tom Kasnak was someone else you dealt
13 with?

14 A. Yes.

15 Q. We will try to figure out some way to get the proper
16 spelling. When were you involved with Mr. Kasnak?

17 A. It would have been '85 or '86. And we can get a
18 specific date based on Big Rapids Hospital, if you
19 like.

20 Q. Did you have the same relationship with Mr. Kasnak --

21 A. Yes.

22 Q. -- that you had with Mr. McDougal?

23 A. Yes.

24 Q. Were you paid in the same manner on a percentage
25 basis?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

65

1 A. Yes.

2 Q. And you referenced Big Rapids Hospital, would that
3 have been a hospital Mr. Kasnak would have contracted
4 with?

5 A. Yes.

6 Q. Were there any other hospitals that Mr. Kasnak
7 contracted with that --

8 A. The list of the Michigan hospitals.

9 Q. Again, did you ever see the contracts between
10 Mr. Kasnak and --

11 A. You know, I don't recall.

12 Q. Would you have a copy of any of those contracts?

13 A. I definitely don't -- I don't have a copy of those.

14 Q. Sure. What differences, if any, were there in your
15 agreement with Mr. Kasnak and your agreement with
16 Mr. McDougal?

17 A. None.

18 Q. Was the percentage the same?

19 A. Yes.

20 Q. And did you and Mr. Kasnak part company?

21 A. Yes.

22 Q. When did that occur?

23 A. I think it was about '86 or early '87.

24 Q. Why did you part company?

25 A. He made unauthorized program changes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

66

1 Q. Help me -- well, again, with Mr. Kasnak, did you
2 perform the installation?

3 A. I was always involved.

4 Q. Did you perform the demonstrations?

5 A. Yes.

6 Q. Did Mr. Kasnak provide, I guess, updates and support
7 to the installation?

8 A. Yes.

9 Q. You said that Mr. Kasnak made unauthorized program
10 changes. What specifically did Mr. Kasnak do?

11 A. Had one of his programmers rewrite the payroll system.

12 Q. The payroll system?

13 A. Uh-huh.

14 Q. And how did you discover this?

15 A. It didn't work.

16 Q. Okay. When you say it did not work, how did you
17 discover it did not work?

18 A. Did you ever hear what happens when employees don't
19 get paid.

20 Q. Oh, yeah. I guess this was installed at one of the
21 hospitals and the employees did not get paid at that
22 hospital?

23 A. Exactly.

24 Q. Which hospital was that?

25 A. It was -- I believe it was South Haven, Marshall. It

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

67

1 was all the hospitals that accepted the update.

2 Q. Obviously, Mr. Kasnak had programmers who worked for
3 him --

4 A. Yes.

5 Q. -- is that correct?

6 A. Yes.

7 Q. And you had provided the code to them?

8 A. Yes.

9 Q. Now, I get confused. I'm not a computer person.

10 There is this concept called source code and there is
11 a concept called object code, and it's my
12 understanding, if I understand correctly, you would
13 have provided the source code to Mr. Kasnak?

14 A. Yes.

15 Q. And his programmers would have then rewritten that
16 code on a payroll system, correct?

17 A. Yes.

18 Q. Why did you provide the source code to Mr. Kasnak?
19 Was it for the purpose of --

20 A. Yes.

21 Q. -- making updates and changes?

22 A. So that he would support local Michigan clients.

23 Q. Would you have provided source code to Mr. McDougal?

24 A. Yes.

25 Q. Did Mr. McDougal have programmers on his staff?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

68

1 A. Yes.

2 Q. These programmers would have written updates or
3 corrected problems, was that part of their job duties?

4 A. Under my direction.

5 Q. When you say under your direction, what do you mean?

6 A. If they made a change, I was to be informed of those
7 changes.

8 Q. Now, let's go back to the payroll situation here.
9 Obviously, when people didn't get their paychecks, it
10 creates a little bit of a stir. How did you become
11 aware of this situation?

12 A. A couple -- I got a phone call from some of the
13 hospitals, if I recall, that's -- or I think I was
14 told from the other facilities that didn't get the
15 update. I don't recall specifically.

16 Q. What did you do in response?

17 A. Cried.

18 Q. After you got over the sorrow at the incident, did you
19 do anything to fix this issue?

20 A. I -- not for the hospitals that took the change. I
21 don't think they wanted to talk to me again. There
22 was a lynch mob at the hospitals.

23 Q. When I say how did you become aware of the change,
24 obviously, you would have had a meeting, I assume, or
25 a telephone conversation with Mr. Kaczynski (sic) to

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

69

1 discuss this?

2 A. Yes.

3 Q. What was his response?

4 A. He blamed me.

5 Q. As a result, you all had a termination of the
6 relationship. And not to be facetious, were any legal
7 proceedings filed or any action other than was there a
8 written termination agreement prepared?

9 A. No. We never went -- no.

10 Q. Did you ever speak to Mr. Kaczynski again or
11 communicate with Mr. Kaczynski?

12 A. You know, I tried. It's Kasnak, by the way.

13 Q. Thank you for the correction.

14 A. No problem.

15 Q. I guess Kaczynski was the Unabomber.

16 A. It's about the same thing.

17 Q. Going back to, he blamed you. Obviously, you took
18 offense at this and the relationship terminated.

19 Now, as a result of the termination of the
20 relationship, did your relationship with the hospitals
21 in Michigan terminate?

22 A. Every one except for two of them.

23 Q. Which ones were those?

24 A. Mecosta in Big Rapids, and Kelsey in Lakeview, the
25 ones that didn't get the update.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

70

1 Q. Do you know why they didn't get the update?

2 A. They refused it.

3 Q. Do you know why they refused it other than being the
4 luck of the draw?

5 A. They didn't have a problem with their payroll so why
6 change something that works.

7 Q. I guess, in computer vernacular, you receive an
8 update, and it's up to you to install it or not
9 install it, and --

10 A. They chose not to install it.

11 Q. Would there have been charges for the update?

12 A. Yes.

13 Q. In return for this price you pay for the update and
14 they made a decision they didn't want to pay for it?

15 A. Right.

16 Q. Now, during this period of time you have referenced
17 payroll, is there a method, a logical method of
18 breaking down, I guess, the functional components of
19 the software we have been discussing, payroll,
20 accounts receivable, is there a way of doing that that
21 you would have used?

22 A. Yes.

23 Q. What was that?

24 A. I guess, maybe I'm confused with the word functional.
25 I don't know what -- you know, each one is considered

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

71

1 a system of, you know, like a --

2 Q. What would have been the systems you would have
3 been --

4 A. It -- you know, like, accounts receivable -- are we
5 going through examples or do you want to be specific?

6 Q. I would like to be as specific as you can. During
7 this period of time, the '79 -- let's break it down.
8 I don't know if there is a natural way of breaking it
9 down.

10 A. There is to a degree. Now, I might get one wrong. We
11 would have had payroll, of course. You would have had
12 an accounts payable, which is standard business. You
13 would have had general ledger. You would have had
14 accounts receivable. You would have had inventory
15 control. You would have had an admissions-type
16 system, sometimes it would have been classified under
17 accounts receivable.

18 You would have had a billing system, again,
19 sometimes you would classify that as part of accounts
20 receivable. You would have a medical records system
21 and then, when you get into healthcare, you have a
22 pharmacy, a laboratory. You could -- you would have a
23 radiology system, and there is a lot of miscellaneous
24 components. You know, it depends through the years
25 they have added nursing and other components, but

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

72

1 that's pretty simple. Did I miss anything?

2 Q. You said payroll, accounts payable, general ledger,
3 accounts receivable, inventory control, and then you
4 said for hospital systems you would add admissions,
5 billing --

6 A. Well, accounts receivable would be in anybody's
7 system.

8 Q. Right. Admissions, billing, medical records,
9 pharmacy --

10 A. Laboratory.

11 Q. -- lab and radiology?

12 A. Yeah.

13 Q. Okay. And as you just pointed out, the nonhealthcare
14 ones, basically, are a generic financial product, if
15 you will. It's what you would expect in an accounting
16 software, is what I refer to. Payroll and accounts
17 payable, general ledger, accounts receivable and
18 inventory control, basically, all businesses are going
19 to have that?

20 A. Yeah, yeah, that's --

21 Q. Your shrimp fleet, would you have given -- would they
22 have had this functionality, the payroll, accounts
23 receivable, accounts payable, general ledger --

24 A. Uh-huh.

25 Q. -- and inventory control?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

73

1 A. Yes.

2 Q. Obviously, they wouldn't have admissions or medical
3 records?

4 A. Right.

5 Q. So Key West Fragrance similarly would have had those
6 kind of programs or systems, would they not?

7 A. Yes.

8 Q. From your vernacular, I'm going to use systems because
9 that's what you and I can agree on, if we can.

10 A. Okay.

11 Q. When I say system, I'm referring to the
12 functionalities that you have just identified, if
13 that's okay. HMS refers to them as modules.

14 A. Whatever is easier for you.

15 Q. I want to have your language because --

16 A. I call it system.

17 Q. That's fine. We will use your language.

18 We have identified Mr. McDougal, Mr. Kasnak
19 as being people with whom you contracted, third
20 parties with whom you contracted.

21 During this period of time, 1979 to 1990,
22 would you have contracted with any other third
23 parties?

24 A. Formally or informally?

25 Q. Either way.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

74

1 A. I'm trying to think of the word -- informally, would
2 have been Roberto Sanchez.

3 Q. Now, going back you said you had a written agreement
4 with Mr. Kasnak and you had one with Mr. McDougal?

5 A. Right.

6 Q. However, you don't know where those are?

7 A. Right.

8 Q. Mr. Kasnak's agreement that you had, would you have
9 had a lawyer look at that?

10 A. You know, I don't even recall.

11 Q. And I guess the reason you don't have a copy of this
12 agreement with Mr. Kasnak is that you moved so many
13 times and because of the passage of time?

14 A. Yeah. It's just I -- important papers in a box, the
15 box sort of didn't make a move.

16 Q. It's not in a garage somewhere, or a basement?

17 A. No, I have actually looked.

18 Q. And you don't have that anymore?

19 A. No.

20 Q. Would you have had a written agreement with
21 Mr. Sanchez?

22 A. No. That's why I clarified the word formally,
23 informally.

24 Q. Okay. What was your oral agreement with Mr. Sanchez?

25 A. If he found a hospital for me, we would share revenue

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

75

1 based on the sale.

2 Q. Mr. Sanchez, when did you begin your relationship with
3 Mr. Sanchez?

4 A. '79.

5 Q. Has that relationship ended?

6 A. Yeah, in '99.

7 Q. Why did that relationship end?

8 A. He -- he was one of the owners of DePoo Hospital, Key
9 West.

10 Q. I guess why did the relationship end, did DePoo
11 Hospital cease to exist?

12 A. They were sold.

13 Q. Who bought DePoo, do you know?

14 A. It was a company out of Naples, Florida.

15 Q. How many, I guess, hospitals did you share revenues
16 with Mr. Sanchez?

17 A. You know, he never took a dime.

18 Q. Okay.

19 A. That's, again, back to the informal --

20 Q. Okay. You had an agreement but he never asked you to
21 pay him anything. Did you give him any consideration
22 for these referrals? Did you give him trips or
23 clothes, or anything like that?

24 A. Took him out to dinner. It was -- he was also a
25 consultant to the facilities so...

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

76

1 Q. Which facilities are you referring to?

2 A. DePoo Hospital, the hospital in Caguas, Puerto Rico.

3 Q. Spell that, if you would, please.

4 A. C-A-G-U-A-S. St. Mary's Hospital in Georgia. Palm
5 Springs Hospital in Hialeah, Florida.

6 Q. Any others?

7 A. No.

8 Q. Now, you said that Mr. Sanchez was a consultant also?

9 A. To the hospitals.

10 Q. To these hospitals?

11 A. Yes.

12 Q. What was the nature of his consultant agreement or
13 arrangement?

14 A. I really don't know.

15 Q. Do you know what services he was providing?

16 A. It varied to each facility.

17 Q. Can you give me an example? Was I.T. one of the
18 services he was consulting --

19 A. No, no. Medicare Cost Report, for an example.

20 Q. As part of his consulting agreement, would he -- like
21 Mr. McDougal, and the others, he wouldn't have been
22 under an obligation to provide the systems --

23 A. No.

24 Q. -- that we have talked about?

25 A. Never.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

77

1 Q. Do you know where Mr. Sanchez is now?

2 A. Key Biscayne, Florida, I believe.

3 Q. Do you have an address, a phone number for
4 Mr. Sanchez?

5 A. No.

6 Q. When is the last time you communicated with him?

7 A. I think I talked to him in 2002.

8 Q. If you needed to get in touch with Mr. Sanchez, how
9 would you go about getting in touch with him?

10 A. I don't know.

11 Q. Is there some other person who would know where
12 Mr. Sanchez is residing?

13 A. I guess somebody that worked at the hospital, DePoo.

14 Q. How did you become -- how were you introduced to
15 Mr. Sanchez?

16 A. He was part owner of DePoo Hospital.

17 Q. Who contracted with you? What individuals contacted
18 you to do services for DePoo?

19 A. IBM.

20 Q. So you basically met Mr. Sanchez through that
21 introduction and relationship?

22 A. To IBM, yes.

23 Q. Did Mr. Sanchez have a title at DePoo?

24 A. I --

25 Q. Was he the administrator, or anything of that nature?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

78

1 A. I -- everything. He was above the administrator.

2 Q. Okay. He was the owner in every sense of the word?

3 A. Yeah. King would have been the word.

4 Q. Given the nature of the relationship, would you
5 provide a source code to Mr. Sanchez?

6 A. No.

7 Q. I believe you said St. Mary's Hospital in Georgia,
8 where is St. Mary's located?

9 A. St. Mary's.

10 Q. It's in St. Mary's, Georgia?

11 A. Yeah.

12 Q. That was not one of the ones we talked about?

13 A. Because you said -- you said prior to '90.

14 Q. That was going to be my question. Would that have
15 been a relationship that would have been post-1990?

16 A. Yeah.

17 Q. Let's go through, if we can, the relationship -- well,
18 I believe you said that your minimum with Mr. Kasnak
19 and Mr. McDougal was \$10,000 per hospital?

20 A. Yeah.

21 Q. Did that include all of the systems that you
22 identified earlier? Did that include payroll,
23 accounts payable, general ledger, accounts receivable,
24 inventory control, admissions?

25 A. Didn't include inventory at the time.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

79

1 Q. Would it have included billing, medical records,
2 pharmacy, lab and radiology systems?

3 A. Pharmacy usually not, because it was a separate -- a
4 lot of places had their own pharmacy systems. No
5 laboratory.

6 Q. No laboratory?

7 A. No.

8 Q. So the standard package, if you will, of systems for
9 the \$10,000, tell me what that included.

10 A. It would have been accounts payable, general ledger,
11 payroll, the accounts receivable, the billing -- let
12 me look at the list here, and the admissions, medical
13 records.

14 Q. So you are saying laboratory, pharmacy and radiology
15 were separate --

16 A. Those were usually billed on a time and materials,
17 usually as an interface.

18 Q. When we reference medical records in 2006, medical
19 records is everything about the patient from
20 temperature, blood pressure, the whole patient record,
21 back in -- my understanding is, in 1985, it was a
22 totally different concept, it was more statistical in
23 nature; is that correct?

24 What is the difference between --

25 A. It is still the road map. So, you know, without the

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

80

1 medical records, you can't get to the clinical-based
2 applications so there is a -- you know, its purpose is
3 still basically the same. You have a tracking of the
4 information for the patient.

5 Q. Maybe -- I want to make clear, in 1985, the medical
6 records software would not have had the patient's
7 blood pressure or temperature, it would have been the
8 patient chart as we refer to it?

9 A. Yes, in the initial database file. It would have had,
10 or could have had a road map to the patient's blood
11 pressure, and so forth.

12 Q. Right. But when they refer to, in today's vernacular,
13 electronic medical records, that is something that is
14 different from medical records --

15 A. I think you need to clarify that.

16 Q. Clarify it.

17 A. You can't do one without the other. So you still need
18 that road map to get to the blood pressure, and so
19 forth. So, you know, you might have an image of
20 something but you still have to go from point A to
21 point B.

22 Q. Okay. This is more -- I guess maybe the better way
23 for me to say it, as I understand it, this is more
24 statistics on admissions, and things of that nature,
25 or am I incorrect?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

81

1 MR. SMITH: Could you clarify "this" when
2 you say "this."

3 BY MR. DENNEN:

4 Q. The medical record system is -- well, tell me what it
5 did. Maybe that's a better way of saying it.

6 A. Again, it classified the patients into a master
7 patient index so that you could track every visit.
8 It, also, again, was the road map to the clinical
9 information systems, the billing systems, the accounts
10 receivable systems.

11 If you -- you couldn't really produce a
12 bill without having the medical records information.

13 Q. Okay. Under --

14 A. You would have to have a diagnosis code, which would
15 be stored in the medical records.

16 Q. Okay.

17 A. Every piece of paper would have a visit number on it,
18 which, again, would be stored in the medical records.

19 Q. I understand.

20 A. If that --

21 Q. We are going to come back to that. I understand what
22 you are saying but I don't know that the record is
23 going to reflect it.

24 I want to go to 1990. In 1990, you
25 incorporated Goldman & Goldman?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

82

1 A. That is correct.

2 Q. Did you engage in business -- the prior business that
3 you had engaged in, did you then, in essence, continue
4 that business under the name Goldman & Goldman, under
5 that corporate name?

6 A. Yes.

7 Q. Now, during the period of '79 to 1990, I think I have
8 asked you this, did you have any employees as Joel
9 Goldman individually?

10 A. No.

11 Q. Did you have any contract programmers?

12 A. If I contracted somebody, they would be paid directly
13 from the facility. If I needed a programmer, I would
14 say, hey, I need some help.

15 Q. Is it fair to classify you as a one-man shop during
16 this time?

17 A. Pretty much.

18 Q. Now, 1990 you begin working as Goldman & Goldman
19 incorporated?

20 A. (Witness indicating.)

21 Q. Did you continue to be a one-man shop?

22 A. I did.

23 Q. I want to back up. You said basically your
24 relationship with DePoo Hospital continued until 1999?

25 A. Yes. Actually, well, to clarify, the name changed to

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

83

1 Lower Florida Keys Health System, somewhere in the
2 middle there. I believe it was '89.

3 Q. Lower Florida Keys --

4 A. Maybe '90.

5 Q. -- Health System.

6 You said you believe in about 1990?

7 A. The small hospital acquired the larger hospital.

8 Q. Was that larger hospital the other one that you
9 referenced --

10 A. Florida Keys Memorial Hospital, yes.

11 Q. Now, prior to that acquisition, had you maintained
12 your relationship with Florida Keys Hospital?

13 A. Off and on, not -- I believe it terminated for a while
14 and I can't give you the exact date. They were
15 managed by another facility so there were several
16 years where I really did not go to them.

17 Q. Okay. Hospital San Rafael, I believe you said your
18 relationship was in 1979. Did that continue --

19 A. Until about '86 or '87.

20 Q. The Michigan hospitals, with the exception of Big
21 Rapids, and there was one other, it --

22 A. Kelsey.

23 Q. In Lakeview?

24 A. Uh-huh.

25 Q. Your relationship with those would have terminated, I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

84

1 think, that was '86 or '87?

2 A. No. I think Mecosta would have been, I'm guessing, it
3 was either '97 or '98.

4 Q. Mecosta, you --

5 A. I continued to do work with them until -- through, I
6 think it was '97 or '98, and I'm not really sure about
7 that date. It could have been part of '99. I'm not
8 sure.

9 Q. That's 1999. Then you said that you kept your
10 relationship with Kelsey Hospital. When would that
11 have terminated?

12 A. You know, I -- I don't remember. It was sometime in
13 the '90s.

14 Q. Okay.

15 A. They were taken over by Spectrum, and the dates were
16 kind of vague.

17 Q. Okay. Your relationship with the other Michigan
18 hospitals ended with Mr. Kasnak?

19 A. Yes.

20 Q. I think you said your relationship with the
21 Mr. McDougal's hospitals terminated when you
22 terminated the relationship with McDougal; is that
23 correct?

24 A. Some -- I kept some of the hospitals.

25 Q. Which ones would you have kept?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

85

1 A. I kept the hospital in -- Henry General, Angleton, in
2 Texas; Livingston. I think that's all. Those were
3 all the time.

4 Q. You kept those from Mr. McDougal?

5 A. Uh-huh.

6 Q. I didn't ask you, but did your -- when you terminated
7 your relationship with Mr. McDougal, was there a
8 lawsuit filed or was there any legal correspondence
9 back and forth?

10 A. There was some legal correspondence.

11 Q. Do you have copies of any of that?

12 A. No.

13 Q. The Georgia hospitals, did you keep those after
14 Mr. McDougal -- you and Mr. McDougal left your
15 relationship, or were they separate, the ones in
16 Georgia?

17 A. Didn't I just give you --

18 Q. You gave me Henry General, that was the only one?

19 A. Yeah.

20 Q. Puerto Rico, we talked about San Rafael. We talked
21 about all of those?

22 A. Uh-huh.

23 Q. So when did your relationship with Henry General
24 cease?

25 A. I'm thinking '89.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

86

1 Q. Your relationship with Angleton?

2 A. I'm not sure. It would have been some time in the
3 '80s, late '80s, after '86, to that time period, and
4 the same thing with Livingston.

5 Q. Then with respect to Mr. Sanchez, you referenced
6 another hospital in Puerto Rico, is that the San
7 Rafael?

8 A. That's San Rafael.

9 Q. I'm sorry.

10 A. It's just the location. Sometimes I use the location
11 versus the name.

12 Q. Okay. Then St. Mary's in Georgia was -- that was
13 after your relationship, correct, with Mr. McDougal
14 terminated?

15 A. Yes. That hospital was owned by Mr. Sanchez.

16 Q. When did your relationship with that hospital cease?

17 A. It was pretty quick. He sold it.

18 Q. Okay. Palm Springs, Florida, the Palm Springs
19 Hospital in Hialeah, Florida?

20 A. That went through about '99 to 2000.

21 Q. Was that one also owned by Mr. Sanchez?

22 A. No, he was a consultant.

23 Q. Why did that terminate?

24 A. They purchased another computer system.

25 Q. Do you know what system they purchased?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

87

1 A. The high-end HBOC.

2 Q. Your relationship with Mecosta in Big Rapids, why did
3 they terminate, do you know?

4 A. They put in a new system.

5 Q. Do you know what system they put in?

6 A. Medatech.

7 Q. The Kelsey hospital that terminated in the 1990s --

8 A. They were taken over by Spectrum.

9 Q. Spectrum Hospital --

10 A. Healthcare.

11 Q. I guess that is a larger healthcare system?

12 A. Uh-huh.

13 Q. Why did your relationship with Henry General
14 terminate?

15 A. They upgraded their system.

16 Q. What system did they put in, do you know?

17 A. SMS.

18 Q. SMS?

19 A. Yes.

20 Q. Is that a company?

21 A. It is. I believe they were called -- I think were
22 taken over, the last time I heard, by Siemens.

23 Q. Siemens?

24 A. I'm not sure.

25 Q. Then Angleton and Livingston, you said you terminated

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

88

1 your relationship --

2 A. They changed systems to a different platform off of
3 the IBM.

4 Q. What system did they --

5 A. Those I really don't know.

6 Q. Now, from 1990 until -- let's use 1999 or 2000, other
7 than the ones we have already discussed, did you have
8 any installations anywhere else --

9 A. From where?

10 Q. 1990 until, I'm using 1999 --

11 A. I had an installation in '97 at Rawlins, Wyoming.

12 Q. R-A-W-L --

13 A. L-I-N-S.

14 Q. Are there any others?

15 A. Douglas, Wyoming.

16 Q. Is that also in '97?

17 A. Yes.

18 Q. Were they owned by the same company?

19 A. No.

20 Q. Any others?

21 A. No.

22 Q. During our prior conversations you referenced the
23 assistance that Mr. Sanchez gave to you, and then also
24 the agreements with the two other individuals,
25 Mr. McDougal and Mr. Kasnak. Did the Rawlins and

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

89

1 Douglas Hospitals, did you have any similar assistance
2 from anyone?

3 A. There was a salesman out of Washington, and I don't
4 remember his name. He got a 33 percent commission of
5 the sales price, and I just don't recall his name.

6 Q. When you say Washington, is that Washington state?

7 A. Yes.

8 Q. How did you come to be in contact with this salesman?

9 A. He contacted me. He worked for a physician billing
10 company in Washington.

11 Q. What did he inform you?

12 A. That they had -- he had two hospitals that were
13 looking to change computer systems.

14 Q. When did -- well, let me back up.

15 Did you have a written agreement with him
16 or with his company?

17 A. You know, I didn't.

18 Q. And, I guess, would the check have been written by
19 Goldman & Goldman for his commission?

20 A. Yes, it would have.

21 Q. Do you still have those records?

22 A. You know, I -- I would have to look. I believe I
23 still have the -- I think I have the contract with the
24 hospital. I'm not 100 percent certain.

25 Q. Let's make as the next exhibit, that would be, I guess

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

90

1 201. We actually have two hospitals identified,
2 Rawlins and Douglas --

3 A. I know I have the proposals. I don't know if I had
4 the signed contract.

5 MR. DENNEN: Could we go off the record for
6 just a minute?

7 (Discussion off the record)

8 BY MR. DENNEN:

9 Q. All right. Mr. Goldman, we have had a discussion off
10 the record and you indicated that you may or may
11 not -- you don't believe you have a signed copy. You
12 may have a working draft. As the Exhibit Number 201,
13 I would say a signed copy or any working drafts of the
14 agreements or proposals with either the Rawlins or
15 Douglas Hospitals and, obviously, with the caveat you
16 are indicating you may or may not have those
17 documents. If you don't, it's fine to say, look, we
18 don't have them.

19 I tell you what, guys. It is 10 after the
20 hour. I think this would be a good time to take a
21 lunch break.

22 MR. SMITH: Okay.

23 (A luncheon recess was taken)

24 BY MR. DENNEN:

25 Q. We are back from our lunch break. I want to go

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

91

1 through the -- before we took our break, we were
2 discussing the individuals who you had basically a
3 relationship with, and you identified one as Tom
4 Kasnak. Do you know where Mr. Kasnak was living
5 when -- or what's the last address or the last --

6 A. Kalamazoo.

7 Q. Do you know if Mr. Kasnak is still living there?

8 A. Don't know.

9 Q. I believe you said he had a company name or an entity
10 that he used?

11 A. Yes.

12 Q. Do you recall the name of that entity?

13 A. I remember the acronym.

14 Q. What was that?

15 A. KISS.

16 Q. KISS?

17 A. The K was for Kasnak.

18 Q. Certainly.

19 A. And that's what I remember. I believe it was
20 incorporated, so you can always pull records.

21 Q. We will definitely do that. You referenced a salesman
22 from Washington State and you didn't recall his name?

23 A. No.

24 Q. Has your memory come back on that issue?

25 A. I still don't know.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

92

1 Q. Do you recall the company he worked for?

2 A. No.

3 Q. When you paid the commission to him, did you pay it to
4 him individually or to his company?

5 A. I believe I paid it directly to him.

6 Q. Do you remember where in Washington State he would
7 have been located, or his company would have been
8 located?

9 A. No.

10 Q. How much commission did you pay to him?

11 A. I don't remember the exact figure. It was -- I really
12 don't remember the exact figure. I'm guessing around
13 25,000, but that would just be a guess.

14 Q. Was that for both hospitals?

15 A. Just one, per each. Again, that would be a guess.

16 Q. What was your agreement? Were you paying him 33
17 percent commission?

18 A. Of just the sales price of the software. So he would
19 get no percentage of installation or training, or
20 anything like that.

21 Q. How much were you paid total on the Douglas, Wyoming
22 Hospital?

23 A. I would have to check my records. There is time and
24 materials you get paid per -- you know, and expenses
25 and it was just -- it's over a time frame of maybe six

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

93

1 months.

2 Q. Okay.

3 A. And the same thing with the Rawlins Hospital, and they
4 also would purchase hardware, and there is just a lot
5 that goes with it.

6 Q. Now, when did your relationship with those two
7 entities -- those two hospitals cease?

8 A. Carvon wrote me my last check in September of 2004.

9 Q. Now you said Carvon?

10 A. Carvon, that's the Rawlins Hospital. It's called,
11 Carvon, C-A-R-V-O-N.

12 Q. September of 2004?

13 A. Uh-huh.

14 Q. What about the Douglas one?

15 A. Boy, I think they -- it was 2001 or 2002. I'm not
16 sure about that date.

17 Q. I believe we have already asked these questions but
18 I'm going to refresh my recollection. You don't
19 believe you have signed copies of the agreements with
20 either hospital; is that correct?

21 A. Not to the best of my knowledge.

22 Q. I think earlier I qualified my question to you with
23 from 1990 until 1999, and you have answered between
24 1999 and 2006, present day, did you have installations
25 at any other hospitals other than the Rawlins and

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

94

1 Douglas ones?

2 A. I had an international one in the Dominican Republic.

3 Q. What hospital was that?

4 A. Central Medico Turobo (ph).

5 Q. You still have that installation in place?

6 A. No.

7 Q. When did that one cease?

8 A. 2004.

9 Q. Was that one that Mr. Sanchez had an interest in?

10 A. No.

11 Q. How did you come to have a hospital in the Dominican
12 Republic?

13 A. It was through a friend of mine that said they
14 possibly needed some software, so I went down there.

15 Q. When was that?

16 A. I think I -- 2000, 2001.

17 Q. Obviously, you installed some of your systems?

18 A. Yeah.

19 Q. How much were you paid on the Central Medico Turobo?

20 A. It depended on the day of the week. It was in pesos
21 so...

22 Q. How much was that?

23 A. All total, \$5,000 in U.S. currency, probably about 25,
24 30,000. They were -- they never finished paying me.

25 Q. Did you have a contract or written agreement with

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

95

1 them?

2 A. I have -- I had a proposal. I don't know if I still
3 have a signed agreement or not.

4 MR. DENNEN: If we could, let's make the
5 proposal or signed agreement Exhibit Number 202.

6 BY MR. DENNEN:

7 Q. Other than Rawlins and Douglas and the Dominican
8 Republic, did you have any other software
9 installations between 1999 and 2006?

10 A. Not that I recall.

11 Q. Now, I guess I'm assuming that would be Goldman &
12 Goldman, Inc. when I say you. Were you still
13 operating as Goldman & Goldman, Inc.?

14 A. Yes. Well, Dominican Republic is a little different
15 so it's kind of -- it's -- without going into too much
16 detail, the Dominican Republic is different.

17 Q. Who is the party to the contract?

18 A. It was me as an individual because they have what they
19 call flat rate tax. What you get paid is what you
20 earn. They take the taxes out ahead of time. They
21 don't have no department of taxation, as such. It's
22 too much. ..

23 Q. So other than that one, which was your personal
24 contract?

25 A. Right.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

96

1 Q. I assume would be reflected on your personal tax
2 return, the Rawlins and Douglas Hospitals, any income
3 from that would be on your Goldman & Goldman tax
4 return, correct?

5 A. Yep.

6 Q. Is Goldman & Goldman a sub-chapter S corporation? Did
7 it make that election?

8 A. No, it's a regular corporation.

9 Q. What is referred to as a C corporation?

10 A. I believe. I don't know the technical term.

11 Q. Other than Michigan, is Goldman & Goldman qualified to
12 do business in any other states?

13 A. I don't know if that's -- I don't -- I don't know
14 about corporate law. My attorney set up the
15 corporation so you would have to ask him.

16 Q. Who is that?

17 A. Michael Hults.

18 Q. Can you spell --

19 A. H-U-L-T-S.

20 Q. Where is Mr. Hults located?

21 A. Big Rapids.

22 Q. Big Rapids, Michigan. While we are on it, do you have
23 an accountant who works with you --

24 A. I had an accountant. I don't anymore.

25 Q. Who was your accountant?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

97

1 A. I will have to get that to you. I don't remember the
2 name off the top of my head.

3 Q. Where was your accountant located?

4 A. Grand Rapids.

5 Q. When did you cease using the accountant?

6 A. 2001.

7 Q. Did you pay taxes -- when I say you, Goldman &
8 Goldman, did it pay income taxes --

9 A. Yes.

10 Q. -- to any state other than --

11 A. Sorry.

12 Q. -- other than the State of Michigan?

13 A. No.

14 Q. To your knowledge, did it ever pay sales tax in any
15 state?

16 A. No.

17 Q. Now, other than Mr. Kasnak, Mr. McDougal, the salesman
18 from Washington State, your friend with the connection
19 to the Dominican Republic and Mr. Sanchez, did anybody
20 else ever assist you in the placements of software
21 with a hospital?

22 A. Steve Nahm.

23 Q. Would you spell his last name, please, sir?

24 A. N-A-H-M.

25 Q. N-A --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

98

1 A. H-M.

2 Q. Who is Mr. Nahm?

3 A. He was the CEO of the DePoo Hospital.

4 Q. What was your arrangement with Mr. Nahm?

5 A. We tried to set up a business in California.

6 Q. What did you do in trying to set up a business in
7 California?

8 A. We bought a computer and set up dentists as a billing
9 service.

10 Q. So the business of this entity was as a dental billing
11 service?

12 A. Yes.

13 Q. Where was this computer located or housed?

14 A. California.

15 Q. Where in California?

16 A. Commerce City, I believe.

17 Q. Was that where Mr. Nahm was located?

18 A. Yes.

19 Q. Why did this business not go forward?

20 A. It just didn't work, I don't know.

21 Q. When did you attempt to do this with Mr. Nahm?

22 A. It would have been, I'm thinking, like, '96.

23 Q. Did the business have a name?

24 A. No.

25 Q. Other than buying a computer, did it have any other

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

99

1 assets?

2 A. No.

3 Q. What caused it -- when you said it didn't work, what
4 caused that reality to occur to you and Mr. Nahm?

5 A. We didn't make any money.

6 Q. So you did have customers?

7 A. Without -- I guess I couldn't explain it without going
8 into a little detail.

9 Q. Please, go ahead.

10 A. It was a private label credit card. We had a bank
11 that would issue credit to customers for getting
12 dental work done.

13 Q. So the dentist would -- the dentist would sign up for
14 a program and as part of the customers coming in, they
15 would get a credit card?

16 A. The customer would come in and they could dial in and
17 essentially get a loan to do the dental work, and the
18 bank would pay the dentist a guaranteed fee and the
19 bank would then bill for the dentist.

20 Q. Okay.

21 A. And we got a percentage of all of that.

22 Q. I guess going along that route, you said you didn't
23 make any money. How long was this business in
24 operation?

25 A. I think we tried it for six months.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

100

1 Q. What was your involvement during that six-month
2 period?

3 A. I designed all of the software.

4 Q. Are you -- let me back up.

5 When you determined that it wasn't working,
6 what did you all do to close down the business?

7 A. There was never any -- we never made any money. There
8 was a person that was -- that had the concept, that
9 designed the concept, and I basically put in my time
10 to write the software. And we all just basically
11 donated time to get it up and running and, hopefully,
12 we saw a lot of money, or potential money. It just
13 did not materialize. We had 12,000 dentists and
14 couldn't make a dime, and we had no employees.
15 Everything was computerized.

16 Q. I guess what I'm getting to, did the company file
17 bankruptcy?

18 A. No. There was -- there was never any income. There
19 was never any expenses. There was never any -- it was
20 just three people, some people getting together to try
21 to create a business opportunity and the bank provided
22 the loans, and so forth. You can call the bank. I
23 think it made a lot of money on the loans.

24 Q. What bank was that?

25 A. I don't recall. I'll try to remember the name of it.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

101

1 I can't remember the name of the bank. This was in
2 the '90s, I just don't.

3 Q. So mid-'90s?

4 A. It was like '96.

5 Q. Would it have been a bank in Commerce City?

6 A. No, it was a bank in Orange County somewhere.

7 Q. It's been long enough you don't remember?

8 A. Right.

9 Q. I want to -- was your relationship with Mr. Nahm
10 solely this business and the fact that he had -- how
11 long was he the CEO of DePoo?

12 A. I think he was there from '79 up until '86, maybe.
13 I'm not sure when he left.

14 Q. He would have been somebody you would have worked with
15 as part of your contracting, correct, or was he?

16 A. He was just an employee for the hospital.

17 Q. Do you know where Mr. Nahm is now?

18 A. No.

19 Q. When was the last time you communicated with Mr. Nahm?

20 A. '99.

21 Q. Where was he then?

22 A. California.

23 Q. Still in Commerce City?

24 A. I believe -- I believe he was in Manhattan Beach. He
25 wouldn't want to live in Commerce City.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

102

1 Q. After he left DePoo Hospital, where did he go from
2 there?

3 A. I -- I think he went to Tampa.

4 Q. He wouldn't have been involved in any of the
5 hospitals --

6 A. No.

7 Q. -- in which you had installations?

8 A. Well, he helped me install and helped at Douglas, in
9 Wyoming.

10 Q. Was that as just a contract employee?

11 A. Yeah. He tried to...

12 Q. Any other businesses that we haven't discussed that
13 you were involved in since 1979?

14 A. Until?

15 Q. Until the present?

16 A. I had -- I guess I didn't mention this earlier. I had
17 another corporation that I set up in Michigan called
18 e-Health Technologies.

19 Q. When was that corporation organized, chartered?

20 A. It was -- I think it was 2005. And it has been
21 disbanded and I filed the papers for it.

22 Q. Did it have any shareholders other than you?

23 A. Yes. Mark Renfro.

24 Q. Mark Renfro, R-E-N-F-R-O?

25 A. Right.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

103

1 Q. Anyone else?

2 A. No, besides myself.

3 Q. Right. Any officers or directors other than you and
4 Mr. Renfro?

5 A. I don't think so.

6 Q. What was the business of e-Health Technologies?

7 A. It was going to set up electronic medical records
8 systems.

9 Q. Where is Mr. Renfro now, do you know?

10 A. Jacksonville, Florida.

11 Q. Why did this venture disband?

12 A. Difference of opinion.

13 Q. A difference of opinion between you and Mr. Renfro?

14 A. Yes.

15 Q. So other than Goldman & Goldman, have you engaged in
16 business in this other entity which never got off the
17 ground, I guess two entities since 1990, is that the
18 sole --

19 A. I believe so, yes.

20 Q. Have you used any trade names other than Goldman &
21 Goldman during that same period?

22 A. I filed for a trade name?

23 Q. No, my question --

24 A. Like a corporate trade name or --

25 Q. Like Burger King is a trade name for a company.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

104

1 A. No, I don't recall if I did.

2 Q. I don't believe I have asked you this question.

3 Obviously this is a lawsuit and you are the plaintiff
4 in this lawsuit, you individually are. Have you ever
5 been a plaintiff in any other lawsuit?

6 A. No.

7 Q. Have you ever been a defendant in any other lawsuit?

8 A. No.

9 Q. Has Goldman & Goldman been a plaintiff or a defendant
10 in any lawsuit?

11 A. No.

12 Q. You said no earlier. I assume when you got divorced
13 that was a legal proceeding so --

14 A. Maybe I'm confused. Is that a lawsuit?

15 Q. In most states it is. I don't know in Florida if that
16 would have been a lawsuit or not. Maybe with that
17 caveat, are there any other lawsuits out there?

18 A. No -- well, we had, like, a self-made divorce,
19 basically. We went to a judge but we wrote up the
20 divorce agreement ourselves with an attorney.

21 Q. That's fine. I'm asking you about lawsuits in which
22 you or Goldman & Goldman or JSM, I guess, would have
23 been involved?

24 A. No.

25 Q. There are none?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

105

1 A. (Witness indicating.)

2 Q. Have any of the entities with which you have ever been
3 an owner/investor ever filed bankruptcy?

4 A. Not to my knowledge.

5 Q. Is there a reason for that caveat?

6 A. Well, if I was -- I don't know if, like, Kasnak or
7 McDougal, or any of these other people, filed
8 bankruptcy so...

9 Q. That's fair enough, and obviously you haven't filed
10 personal bankruptcy, correct?

11 A. Right.

12 Q. I assume you have never -- let me ask the question.
13 Have you ever been charged with a crime other than a
14 minor traffic offense?

15 MR. SMITH: Objection, because I think
16 under the Rules of Evidence it's whether or not he has
17 been convicted of a crime in the last ten years.

18 MR. DENNEN: I understand from the
19 admissibility but this is a discovery deposition. I'm
20 allowed to ask the question and discover additional
21 evidence.

22 BY MR. DENNEN:

23 Q. So with that caveat, I'm asking you that question.

24 MR. SMITH: Go ahead and answer.

25 A. Within the last ten years?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

106

1 BY MR. DENNEN:

2 Q. No, ever.

3 A. I had a DUI.

4 Q. So you were charged with DUI?

5 A. Yes.

6 Q. Were you convicted or did you plead guilty to DUI?

7 A. I don't -- it wasn't really any -- I don't know how
8 to --

9 Q. What was the disposition of the criminal case?

10 A. There was none. I don't know. I didn't get -- lose a
11 license or anything like that, is that what you are
12 trying to say?

13 Q. Let's go through the facts. When did that occur?

14 A. In '89.

15 Q. Where did that occur?

16 A. Key West.

17 Q. Did you go to court?

18 A. Yes.

19 Q. Were you asked to plead not guilty or guilty or no
20 contest?

21 A. I think it was a no contest. I'm not sure.

22 Q. Were you placed on probation?

23 A. I was asked to do community service and attend a
24 class.

25 Q. Did you complete --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

107

1 A. Yes.

2 Q. -- your community service and your --

3 A. Yes.

4 Q. -- attendance of the class?

5 Other than this one DUI, is there any other
6 criminal charge that you have ever had in your entire
7 life?

8 MR. SMITH: Once again, just want to make
9 sure the record reflects that I object to the
10 admissibility of any of these answers.

11 You can go ahead and answer the question.

12 A. I had actually another DUI in '79.

13 BY MR. DENNEN:

14 Q. Okay. Where was that?

15 A. Key West.

16 Q. What was the disposition?

17 A. It was --

18 Q. Was it a similar disposition?

19 A. Yeah, actually, I designed software for the sheriff's
20 department.

21 Q. Anything else?

22 A. I was arrested for possession of marijuana.

23 Q. When was that?

24 A. '72.

25 Q. What was the disposition of that?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

108

1 A. It was thrown out. I never went to court, or
2 anything. It was -- there was no charges that were
3 filed. I mean, it was closed.

4 Q. Where was that?

5 A. Philadelphia.

6 Q. I assume that is Philadelphia, Pennsylvania?

7 A. Yep.

8 Q. Anything else?

9 A. Well, let me see, well, Colorado in '70.

10 Q. What was the charge there?

11 A. Possession of marijuana.

12 Q. What was the disposition?

13 A. No evidence.

14 Q. So you were saying it was dismissed?

15 A. Both charges were dismissed, there was no evidence.

16 Q. Both charges in Colorado?

17 A. No, Colorado and Philadelphia. There was --

18 Q. Okay.

19 A. -- wasn't any.

20 Q. Anything else?

21 A. Nope. I don't think so. That's going back 30 years.

22 Let me see, no.

23 Q. I know 30 years is a long time, and memories fade, but
24 nothing since 1989 for sure?

25 A. No. I -- no traffic tickets, right?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

109

1 Q. We are excluding traffic tickets. We are talking
2 about just misdemeanors or felonies.

3 A. Okay.

4 Q. I believe I asked you earlier if you had ever given
5 testimony in a deposition. Have you ever given
6 testimony other than today?

7 A. I don't -- I don't think so.

8 Q. I want to go back to, I guess, 1978, or so, when you
9 went to work at Florida Keys Memorial Hospital.

10 A. Okay.

11 Q. How did you get that job?

12 A. I went down there with/for Dynamic Control initially.

13 Q. So this was a client of Dynamic Control?

14 A. Exactly.

15 Q. What happened? How were you made an offer of
16 employment?

17 A. I worked for them and they were tired of paying
18 Dynamic the big bills, so they offered me a job.

19 Q. Who would have made that offer?

20 A. The administrator of the hospital.

21 Q. Do you recall the administrator's name?

22 A. It was a strange name. I think it was something like
23 Raleigh Dudick (ph). It was strange. I'm thinking it
24 was something very --

25 Q. Now, in your position with Florida Keys did you report

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

110

1 directly to the administrator?

2 A. Yeah.

3 Q. How big was the hospital?

4 A. Boy, this was a long time. It was probably 125 beds,
5 I'm guessing there. I'm just not sure.

6 Q. Was it solely one facility located in Key West?

7 A. Yes.

8 Q. Was it a primary care facility as opposed to a rehab
9 or a psych facility?

10 A. Yes, I don't remember. I don't remember.

11 Q. Now, when you left Dynamic Control and went to Florida
12 Keys, did you download software onto a diskette and
13 take it with you to Florida Keys?

14 A. No.

15 Q. Did Florida Keys already have the software on its
16 system that you were going to enhance and program?

17 A. Yes.

18 Q. Did that software have a name?

19 A. HFMS.

20 Q. HFMS?

21 A. Yes.

22 Q. What is HFMS?

23 A. It was the IBM program for hospitals.

24 Q. HFMS would have been something -- would that have been
25 bought from Dynamic Control?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

111

1 A. No.

2 Q. Would it have come with a machine?

3 A. It came from IBM with a machine. Dynamic Control had
4 their own software.

5 Q. I may be showing my age but I remember the days of the
6 great big computer boxes as opposed to the personal
7 computer boxes. Would this have been on one of those
8 larger size boxes?

9 A. Define the word larger.

10 Q. Would it fit in this room where we are sitting?

11 A. Yes.

12 Q. Would it have been -- I'm trying to get some reference
13 point.

14 A. It was probably eight foot by four foot, something
15 like that. It was originally a System 34, which would
16 sink a 12-foot boat.

17 Q. Okay. You're saying it is pretty massive,
18 relatively --

19 A. In today's terms, yes.

20 Q. About as big as a side-by-side refrigerator?

21 A. A little bigger.

22 Q. That's probably a better analogy. Did you access it
23 by using card readers or had they progressed --

24 A. This was past the card readers. You actually had real
25 terminals, hence the word green screen.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

112

1 Q. But these were dummy terminals in the sense of there
2 wasn't a CPC attached to it, correct?

3 A. CPC is not a good word to use.

4 Q. Okay. I'm sorry. I remember when I was a younger man
5 using a terminal that was basically just a screen with
6 a cable to the mainframe, is that the same type of
7 situation?

8 A. Yes.

9 Q. I actually remember card readers.

10 So when you were programming on the Florida
11 Keys system, did you have to be in the Florida Keys
12 offices?

13 A. Yes.

14 Q. Now, I believe you said at the same time, or soon
15 thereafter, was when you went to the other hospital,
16 DePoo Hospital --

17 A. Correct.

18 Q. -- as a contract programmer?

19 Again, how did -- did you bring the
20 software to the hospital or did the hospital already
21 have code on its computer?

22 A. They contacted IBM. IBM contacted me. And we
23 installed the -- they bought the computer from IBM and
24 then installed the software onto their computer.

25 Q. They bought an IBM computer?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

113

1 A. Yes.

2 Q. And an IBM software package?

3 A. I -- I don't remember the whole arrangement but
4 everything was done with IBM. I installed all of the
5 software. I don't believe that IBM gave them any
6 software because I already had copies of the IBM
7 software.

8 Q. I guess I want to be sure I understand who would have
9 contacted you from DePoo Hospital?

10 A. At the time --

11 Q. Or was it IBM who contacted you?

12 A. IBM contacted -- when I was working in Key West --

13 Q. Right.

14 A. -- IBM would contact me.

15 Q. I guess what my question is, I want to make sure I
16 understand what you're saying, is you were sitting at
17 Florida Keys Hospital and the phone rang and IBM said
18 we have got a prospect over at DePoo, is that -- would
19 that have been how it would have occurred?

20 A. That's correct.

21 Q. And so you went over and introduced yourself to
22 somebody at DePoo?

23 A. Yes.

24 Q. Who would that have been?

25 A. Roberto.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

114

1 Q. And you introduce yourself to Roberto. What do you
2 say by way of introduction, IBM called and said to
3 expect me?

4 A. Hello. Basically that, yeah.

5 Q. And Roberto/DePoo then says, we are going to buy the
6 IBM hardware, correct?

7 A. Exactly.

8 Q. And, I guess, you said you didn't think IBM gave them
9 any software. Would they have bought software from
10 IBM?

11 A. You know, they had the operating system and IBM at
12 that time sold you a system, you know, with their
13 operating system, and so forth. So -- when I
14 installed the software I installed it with the IBM
15 service engineer and customer engineer.

16 Q. So the only software you would have installed would
17 have been obtained from IBM?

18 A. And my software for the hospital system.

19 Q. Now, where did you get that software? What computer
20 did you use to develop that software?

21 A. I developed the software at Florida Keys Hospital.

22 Q. On their box?

23 A. On their box.

24 Q. That was using the HFMS program that Florida Keys had
25 purchased from IBM, correct?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

115

1 A. It was based on parts of that, yes.

2 Q. I'm somewhat confused. When would you have installed
3 the software at DePoo? Was it -- because you went to
4 work for Florida Keys you said in '79.

5 A. It was -- it wasn't that -- it was almost immediately.
6 You see...

7 Q. They would have been contemporaneous?

8 A. Yeah. IBM was hungry.

9 Q. Sure. I want to be sure. When you say IBM is hungry,
10 correct me if I'm wrong, and I might be putting words
11 in your mouth, they -- it wasn't uncommon for them to
12 basically use outsiders as a selling tool for their
13 sales of their hardware. Their sales were in hardware
14 at that time, not the software, is that a fair
15 statement?

16 A. That's -- that's pretty close. That is a fair
17 statement.

18 Q. Of course that was back when IBM was still the king of
19 the computer, the hardware?

20 A. Exactly.

21 Q. So that would have been how you would have gotten that
22 referral?

23 A. (Witness indicating.)

24 Q. Okay. Now, did you receive any kind of written
25 document or permission from Florida Keys to allow you

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

116

1 to take this software off their system and put it into
2 the competitor?

3 A. Didn't need it.

4 Q. Why do you say you didn't need it?

5 A. One of the provisions for my employment at Florida
6 Keys system was that I owned everything I produced.

7 Q. Do you have a written agreement with Florida Keys
8 systems that says that?

9 A. I would have -- I don't have it now.

10 Q. Why don't you?

11 A. Because that was in the '70s and I don't have all of
12 those documents.

13 Q. Just a passage of time?

14 A. Yeah. It's just...

15 Q. Is there anyone who can, to your knowledge, verify the
16 existence of that agreement?

17 A. I don't know. The administrator at the hospital.

18 Q. Other than the administrator, is there anyone else?

19 A. It would have been -- it might have been the IBM
20 people.

21 Q. Do you know who the IBM people were?

22 A. That's a -- I can't recall the name.

23 Q. Okay.

24 A. They work at the IBM office and they had Key West
25 territory. You could look it up.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

117

1 Q. So, you put the hardware -- excuse me. You put the
2 software that you took from Florida Keys onto the box
3 at DePoo?

4 A. I don't like the word took. My software.

5 Q. Well, we can argue about --

6 A. Okay.

7 Q. But the software from Florida Keys was installed by
8 you onto the DePoo mainframe?

9 A. That is correct.

10 Q. What I want to get to is, I'm trying to understand
11 because, again, my memory of computers in those days
12 where you didn't have -- did you ever have one of
13 these System 36s or System 34s at your house?

14 A. What time frame? At one time I did, yes.

15 Q. When would that have been?

16 A. It was like '84, '85. I had System 36 at that time
17 and I don't remember the exact year so don't -- but I
18 did have one.

19 Q. But before '84/'85, give or take a little bit of time,
20 you would have been limited to working at Florida Keys
21 or --

22 A. I would have been working at DePoo or Florida Keys,
23 you know?

24 Q. Sure. Again, I want to kind of go down this line.
25 Before you got your mainframe, if you were at Florida

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

118

1 Keys would you make changes and modifications to the
2 software?

3 A. Yes.

4 Q. Was that a part of your agreement with Florida Keys to
5 do that?

6 A. Yes.

7 Q. And would you then make a copy of that and put it on
8 the system at DePoo?

9 A. Yes.

10 Q. I think I asked you this question earlier, I know I
11 did, you don't have a copy of your agreement with
12 Florida Keys or DePoo?

13 A. No.

14 Q. Were there any other hospitals, any other places that
15 housed an IBM mainframe of --

16 A. Puerto Rico

17 Q. You would have used their mainframe to make changes --

18 A. Yes.

19 Q. -- correct, to the software?

20 And, again, you don't have a copy of your
21 agreement with Puerto Rico?

22 A. No.

23 Q. In all of these instances you were paid by these
24 individuals, these entities?

25 A. Yes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

119

1 Q. Did you have an agreement with IBM?

2 A. A formal written agreement?

3 Q. Yes.

4 A. Not that I can recall.

5 MR. DENNEN: Let's take a break.

6 (A recess was taken)

7 BY MR. DENNEN:

8 Q. We have had a brief break now. I believe when we took
9 our break we were talking about the way that
10 modifications were made by you to the software and one
11 of the -- you indicated you got a mainframe at your
12 house, IBM System 36?

13 A. Uh-huh.

14 Q. In 1984 or '85?

15 A. I don't remember the exact year.

16 Q. Sure. Now, did you use that continually or did you
17 change and get a different type of computer, AS400,
18 for example?

19 A. I didn't get an AS400. I never got an AS400. Well,
20 what time frame?

21 Q. Why don't you tell us --

22 MR. SMITH: Is there a question pending?

23 BY MR. DENNEN:

24 Q. Well, the question is, what other computers did you
25 utilize at your house to make modifications to the

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

120

1 software?

2 A. Again, what time?

3 Q. We started --

4 A. Today?

5 Q. We started in '84, '85 you had a mainframe at your
6 house.

7 A. Yeah.

8 Q. And that was a system --

9 A. 36.

10 Q. How long did you use the 36?

11 A. A couple of years.

12 Q. What did you replace the System 36 with?

13 A. At my house, I really -- that's again, it's time
14 frame. Currently I have two AS400s in my house. Is
15 that --

16 Q. Sure. When did you obtain those AS400s?

17 A. I believe it was, one last year, and one about two
18 years before.

19 Q. So you would have acquired your first AS400 in about
20 2002?

21 A. I -- I had one -- let me see, I had an AS400 -- you
22 are talking in my house, my home office?

23 Q. Whatever office you use.

24 A. I think I had one in '93, and I -- they got smaller by
25 then, by the way.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

121

1 Q. Right. So --

2 A. I don't know the exact dates but I have had them --

3 Q. Well, you acquired a System 36 in '84, '85?

4 A. Uh-huh.

5 Q. Then in -- excuse me. 1993 you got an AS400; is that
6 correct?

7 A. '93? I'm trying to remember. I don't remember the
8 exact date. Maybe it was -- it could have been '93,
9 it could have been '96, I just don't know. I -- I had
10 an AS400 in my office at some time.

11 Q. Did you cease using that AS400 or did you dispose of
12 that AS400?

13 A. I took one, was the one I used in California.

14 Q. Okay.

15 A. And then I took that same machine and sold it to the
16 hospital in Wyoming --

17 Q. So that --

18 A. -- in '97. So that one. And I had purchased
19 one, another one, at about the same time frame. I'm
20 thinking that one was '96 and I had another one I
21 purchased in '97. Again, don't quote me on these
22 dates.

23 Q. Sure. What would have happened to the one you
24 purchased in '97?

25 A. I took that to the Dominican Republic.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

122

1 Q. What happened to the System 36?

2 A. I really don't know, boat anchor.

3 Q. You would have presumably disposed of it in some form
4 or fashion when you got the AS400?

5 A. It was -- it was disposed of. It was -- I don't
6 remember what happened to it. It was just of no
7 value.

8 Q. After you obtained a mainframe at your house, did you
9 continue to make modifications on the client's boxes
10 of the software?

11 A. There is -- I have to clarify some things. I'm going
12 to guess in '81 or '82 I obtained equipment so I could
13 dial in from anywhere in the world.

14 Q. Okay. When you say dial in, what do you mean?

15 A. I used a modem.

16 Q. That allowed you to call into the clients' machine?

17 A. What you would do is you would put this big,
18 beautiful, blue box, because they were blue, and you
19 would dial in to that box, which would connect to the
20 user's machine. It was a -- so you didn't have to be
21 on the user's site.

22 Q. You could do that from anywhere in the world as long
23 as you had that blue box with you?

24 A. Blue box, a computer. It wasn't very portable.

25 Q. Once you had this capability, did you continue also

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

123

1 making modifications on-site at the client's --

2 A. When I was there.

3 Q. When you were there. Okay.

4 So the source code then, as I understand
5 it, would have been on the clients' computer; is that
6 correct?

7 A. Yes.

8 Q. Hospital San Rafael, you indicated that you began
9 working with them in 1979. Would they have
10 been -- would they have received the computer software
11 that was on the Florida Keys Hospital system?

12 A. They received the software that was on the DePoo
13 system.

14 Q. Now, how did you make that transfer?

15 A. I put them on eight-inch diskettes.

16 Q. How many would that have been?

17 A. I don't -- you know, it's hard to tell. I couldn't
18 tell you how many.

19 Q. Five?

20 A. You would have had so many for each module, or system.

21 Q. Right.

22 A. What term do you like?

23 Q. But you don't remember how much -- how many you would
24 have had?

25 A. Not really.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

124

1 Q. Okay.

2 A. At least one per system.

3 Q. Okay.

4 A. Usually more.

5 Q. Let's see, would you have done the same thing with
6 Singleton Fleet's client?

7 A. Singleton Fleet's client was software written
8 specifically for them.

9 Q. The McDougal system software, would that have come
10 from the software based on the Florida Keys box?

11 A. Would it -- based on it?

12 Q. Sure.

13 A. Yes.

14 Q. Was that after you got -- did you deal with them after
15 you got your computer at the house?

16 A. Before.

17 Q. Before you got the computer at the house?

18 A. Right. I would -- I was dealing with Mr. McDougal
19 prior to having the computer at the house.

20 Q. So let me see if I -- well, what about Mr. Kasnak, did
21 you have the computer at the house when you were
22 dealing with his clients?

23 A. You know what? I'm pretty sure I did.

24 Q. You are pretty sure you did not?

25 A. I did.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

125

1 Q. Okay. Now, with all of these installations, did they
2 have the source code on their systems, on their box?

3 A. Now, I -- I'll clarify it, there was source code on
4 the box but they couldn't access it.

5 Q. I believe you said with McDougal --

6 A. Well, McDougal had the software, a copy of the
7 software but -- and he could add and make changes but
8 the users could not.

9 Q. Why was that?

10 A. Because if they made changes you could get in trouble.
11 I mean, if they made an unauthorized change, then the
12 program wouldn't work and, you know, how could I fix
13 it?

14 Q. Well, I guess if somebody knew what they were doing
15 and made a change that worked, you wouldn't need to
16 fix it, would you?

17 A. That's not a point. That's not -- it -- at some point
18 in time if I had to make a change later on, I would
19 have a problem because there would be a change that I
20 didn't recognize, so my change would affect that
21 change. That could be a problem. It's not
22 something --

23 Q. But forgetting whether or not it's good business or
24 good practices to do it, the source code was on the
25 computer box at the user site, correct, sir?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

126

1 A. Yes.

2 Q. I know we have gone through this before but you don't
3 have any of your written agreements with DePoo or any
4 of these installation sites, correct?

5 A. No.

6 Q. After you began working, I guess, at DePoo, did you
7 take any more classes, any more IBM classes or get any
8 more formal training on computers?

9 A. At any time?

10 Q. Yes.

11 A. I went to a class on the AS400 and, I believe, that
12 was '89.

13 Q. How long was that class?

14 A. I don't recall. It was either a week or two weeks.

15 Q. Where was that located?

16 A. It was in Detroit.

17 Q. Does the AS400 use a different computer language from
18 the 36?

19 A. It uses a similar language, an updated version.

20 Q. Was that the purpose of the class, was to teach you
21 this new language?

22 A. Yes.

23 Q. This updated version?

24 A. Called Native Mode.

25 Q. Did you attend any other classes, any other training

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

127

1 classes?

2 A. Not -- no, I don't think so.

3 Q. With respect to -- well, when did you cease working
4 with Florida Keys?

5 A. There were different -- this is kind of -- you have to
6 be more specific. There was Florida Keys became
7 managed by HCA, which became -- it has gone through
8 several gyrations.

9 Q. Let's talk about it. You went to work at Florida Keys
10 in --

11 A. '79, '78.

12 Q. '78 or '79. And it was -- when did it become managed
13 by HCA?

14 A. I'm really not sure. I'm going to guess it was, like,
15 '81. It was a short time frame, '81, '82. I'm -- you
16 know?

17 Q. Did they utilize the software system that was in
18 place?

19 A. No. They put in their own.

20 Q. Okay. When HCA ceased managing them, do you recall
21 when that occurred?

22 A. I believe it was when we took them over. I will say
23 we, when the small hospital acquired them.

24 Q. When DePoo acquired --

25 A. Yes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

128

1 Q. When was that?

2 A. I believe it was in 1990.

3 Q. So for seven or eight years Florida Keys was an HCA
4 hospital?

5 A. Yes. I did not see them.

6 Q. Did you have any agreement with HCA about the
7 software?

8 A. I removed all of the software.

9 Q. Excuse me?

10 A. I removed the software off the computer system.

11 Q. You removed it. How did you remove it?

12 A. I went in and I deleted the source code.

13 Q. Who requested that you do that?

14 A. The people who were putting new software in.

15 Q. HCA people?

16 A. Yeah.

17 Q. Was there any particular reason they asked you to do
18 it?

19 A. Because it was my software.

20 Q. Okay.

21 A. You have to remember that was my software. It was not
22 their software. I had an agreement with them to write
23 software, which I owned.

24 Q. But you don't have a copy of that agreement, do you,
25 sir?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

129

1 A. No.

2 Q. You don't have anyone other than yourself who can
3 testify as to the existence of that software -- let me
4 finish my question, the existence of that agreement,
5 do you?

6 A. No.

7 Q. So you removed the software by hitting the delete key,
8 correct?

9 A. Well, that's not -- I was simplifying it for you. I
10 mean, you go and remove -- you give it a command to
11 remove the source code. And since it was an old
12 machine, I don't even remember the command.

13 Q. Every time you have lost an installation have you done
14 that?

15 A. I have tried to.

16 Q. When you say you have tried to, explain that to me.

17 A. You know, sometimes you might lose an installation
18 where they don't want to see you again and they just
19 give you in writing that they have removed it and that
20 is usually acceptable.

21 Q. Tell me which ones have not allowed you to remove the
22 source code.

23 A. Some of the hospitals that I would have had agreements
24 with, Kasnak and McDougal, who I no longer service. I
25 never went back to any of those facilities.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

130

1 Q. Were those the only ones that you accepted a letter?

2 A. It would either been a letter or I accept verbal
3 agreements. If they tell me they are going to remove
4 it, I usually accept that as a...

5 Q. Now, with Kasnak and McDougal, who gave you that
6 agreement? Was that given to you by Kasnak or was it
7 given to you by each individual hospital?

8 A. I -- again, I don't recall those. It was --

9 Q. Okay.

10 A. I believe the hospitals went as far as even just
11 removing the whole computer, so I don't think
12 they -- it wasn't a fact of software. I think they
13 went to a different computer system.

14 Q. All of the hospitals in the Kasnak --

15 A. I'm not sure.

16 Q. Okay.

17 A. I mean, the other names we can check, if you like. I
18 believe -- oh, I don't know.

19 Q. What about Mr. McDougal and Mr. Kasnak, they had
20 source code, did you remove it from their systems?

21 A. No.

22 Q. Why not?

23 MR. SMITH: Excuse me, could the reporter
24 read the last question and answer.

25 (The requested portion of the record was

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

131

1 read by the reporter)

2 MR. SMITH: Thank you.

3 BY MR. DENNEN:

4 Q. Why did you not remove it from their systems?

5 A. I didn't think they would sell it without my
6 knowledge.

7 Q. Did they provide any written certification to that
8 effect?

9 A. No.

10 Q. Did you attempt to obtain certification?

11 A. No.

12 Q. I believe we referenced earlier that you may have
13 exchanged some letters from lawyers with at least one
14 of these individuals, McDougal or Kasnak, was that a
15 subject of correspondence by the lawyers?

16 A. It could have been. There was -- I didn't have any
17 legal correspondence with Kasnak.

18 Q. What about Mr. McDougal?

19 A. McDougal, I had contacted an attorney. It was
20 primarily for money he owed me, not for anything to do
21 with the software systems.

22 Q. Okay. So were the letters that went back and forth
23 related solely to collection of money?

24 A. Yes.

25 Q. How much money was that?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

132

1 A. I believe it was \$50,000.

2 Q. That would have been in '86?

3 A. Yeah, about -- roughly around that time.

4 Q. So that was real money back in '86?

5 A. (Witness indicating.)

6 Q. But you weren't concerned about the software then in
7 1986, source code?

8 A. No. And you want me to clarify why?

9 Q. Sure.

10 A. It's because when I installed source code in another
11 site, I would do certain things to make it run for an
12 entire hospital system. Like, it would be missing
13 certain files, and so forth, so if they didn't install
14 it correctly, it just wouldn't work correctly. So I
15 was involved in every installation.

16 Q. Was that why the payroll module didn't work with
17 Michigan hospitals?

18 A. No. The payroll module was -- system or module? We
19 are going back and forth on the terms.

20 Q. I'm probably guilty, payroll system.

21 A. Okay. No. That was where actual programs in the
22 system were changed.

23 Q. Okay.

24 A. It really had to do with the integration of the
25 programs.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

133

1 Q. Again, getting back to, I guess, Mr. McDougal, were
2 you successful in collecting your \$50,000?

3 A. No.

4 Q. Did you collect any amount?

5 A. No.

6 Q. Do you know why you didn't collect money that you
7 thought you were owed?

8 A. Yeah, my attorney fees would have exceeded
9 collections.

10 Q. Why was that? It seems like a simple collection case.

11 A. He was fighting it and my attorney fees -- it really
12 wasn't worth my time.

13 Q. What did the 50,000 relate to?

14 A. Software sales.

15 Q. Which hospitals?

16 A. I don't recall right now. I just remember the amount.

17 Q. What was the maximum amount of money you received for
18 software sales?

19 A. You mean for one site?

20 Q. Yes. One site.

21 A. It's hard to tell. I couldn't even tell you.

22 Q. We know you said --

23 A. Minimum was ten.

24 Q. Was ten?

25 A. It usually averaged between -- you know, it was over a

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

134

1 time frame. I don't even want to venture a guess.

2 The money you received was over months and years
3 actually.

4 Q. But just for the software itself, just for
5 that -- because your commission or your percentage was
6 based upon the -- it was 50 percent, was it not, with
7 Mr. McDougal?

8 A. Yes.

9 Q. What would have been the maximum amount you would have
10 received from Mr. McDougal?

11 A. I think 25,000, it could have been, on one of the
12 sales. I'm not even sure.

13 Again, like I said, the way the money was
14 paid was they would give a down payment, and then I
15 would receive additional money for installation, and
16 so, it got really vague on how that sales price got
17 put in.

18 Q. What would have been the maximum amount you would have
19 received from Mr. Kasnak?

20 A. Again, about -- it would have been -- again, it's
21 about the same thing. It would have been about
22 25,000. There was a lot of additional, you know,
23 installation time.

24 With Mr. Kasnak, if I did a demonstration,
25 I would get paid for actually doing the demo so I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

135

1 charged a fee to come in and -- fly in and do a demo,
2 and so forth, which was actually \$4,000 just to do the
3 demo.

4 Q. You were paid by Mr. Kasnak?

5 A. Yes.

6 Q. What about Mr. McDougal --

7 A. No.

8 Q. -- did he pay you?

9 Okay. So you elected to forego the \$50,000
10 from McDougal and just get on with life; is that a
11 fair statement?

12 A. Yeah.

13 Q. Did Mr. McDougal have an attorney?

14 A. Yeah.

15 Q. Do you have copies of any of that correspondence from
16 way back when?

17 A. No. But the two attorneys went to school together.

18 Q. When you did demos back -- I assume today a demo would
19 be done on a laptop?

20 A. Yes.

21 Q. But way back when you couldn't really take an AS400 or
22 a System 32 --

23 A. 36.

24 Q. -- whatever, with you, did the client already have to
25 have that computer to do a demo?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

136

1 A. Not necessarily.

2 Q. Explain that to me. Explain how you did that.

3 A. Well, let's -- I'll use Michigan for an example, since
4 we are in Michigan.

5 Q. Sure.

6 A. The Grand Rapids office had a very nice IBM office and
7 they would provide the space for the demo. They would
8 also provide tea, coffee, Cokes, doughnuts, give me a
9 very nice demo room with a projector, comfortable
10 seats.

11 Q. Sure.

12 A. Let me use their equipment.

13 Q. Okay.

14 A. So I would show up a day ahead of time, install an
15 operating system, and we would have the demo there.

16 Q. Now, was that how you always did demos or did you go
17 to the customer's location, potential customer's
18 location?

19 A. If they had the equipment, I would have went to the
20 customer site. Sometimes a customer would go to an
21 existing site to see a demo.

22 Q. What made that determination whether you went to a
23 customer site, you went to IBM or you went to their
24 place, was there any rhyme or reason?

25 A. (Witness indicating.)

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

137

1 Q. You are shaking your head?

2 A. I'm just trying to -- it's just at the customer's
3 convenience. You did what the customer wanted.

4 Q. Again, to borrow a phrase, the customer is always
5 right when I'm trying to sell to him, right?

6 A. (Witness indicating.)

7 Q. So at another customer site, I assume, you would
8 contact the I.T. people and they would -- you would
9 schedule a visit through them. How often did that
10 occur?

11 A. Well, almost always you did end up at a customer site
12 visit, even if it wasn't the initial demo. I mean,
13 you don't usually make a sale unless you have a
14 reference point where there is somebody to say nice
15 things about you.

16 Q. Okay. But, ordinarily, that would be kind of a final
17 point as opposed to a beginning point. So if you go
18 to a customer site, what do you have to do?

19 A. Well, if you go to Key West in the wintertime you
20 usually make a sale.

21 Q. Let's say, it's Grand Rapids in the wintertime and you
22 don't have IBM with a nice, plush office, what do you
23 do, or what did you do?

24 A. You better do a good demo.

25 Q. Would you fly in a day early?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

138

1 A. Yeah. Again, it depended on each site, if we had to
2 install a system from scratch. If there was no
3 machine there, I would have to get IBM to set up a
4 machine or set up some site where there was a
5 computer.

6 Q. I guess what I'm getting to, how long did it take you
7 to load the software onto the system?

8 A. I could do it in a day or less.

9 Q. Eight hours?

10 A. Yeah.

11 Q. How long did your demonstrations take, typically?

12 A. It depended how organized. It could take one day or
13 two days.

14 Q. Okay.

15 A. Each group of people would come in, you know, from
16 each department.

17 Q. So you would have the accounting people there, and
18 then --

19 A. Medical records, and so forth.

20 Q. Everybody got to see it, touch it --

21 A. Question-and-answer periods.

22 Q. Typical rule-by-committee structure, is that fairly
23 standard in a hospital?

24 A. Well, I guess.

25 Q. So you would be there for one to two days. Then -- I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

139

1 guess I'm thinking about, you got paid \$4,000 for this
2 kind of three-day trip?

3 A. For Kasnak, yes.

4 Q. Yes?

5 A. Yes.

6 Q. But Mr. McDougal didn't pay you for those kind of
7 demonstrations?

8 A. No.

9 Q. Was that just a failure on your part to negotiate
10 that?

11 A. Yeah.

12 Q. Other than Mr. Kasnak, did anybody typically pay you
13 to come and do a demonstration?

14 A. No.

15 Q. Did you do a demonstration for DePoo Hospital in the
16 Keys, Key West?

17 A. I think he just looked at the system at Florida Keys.
18 I don't really -- didn't really do a demo. It was
19 just kind of different. They needed a system
20 desperately. He talked to IBM and they put it in
21 almost sight unseen.

22 Q. Did you ever bring anyone to Florida Keys to see how
23 it worked, see the system in operation?

24 A. Afterwards?

25 Q. Yes, any of your customers or potential customers.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

140

1 A. After they built a new facility.

2 Q. When was that?

3 A. I'm trying to remember. It was '83 or '84. I'm not
4 really sure on the date on that.

5 Q. That would have been, HCA would have already taken
6 them over then?

7 A. DePoo never got taken over.

8 Q. I'm sorry, I was saying Florida Keys but --

9 A. You said that DePoo.

10 Q. No, I said Florida Keys. Let's start with Florida
11 Keys. The next question was going to be DePoo.

12 So with Florida Keys did you ever take
13 anybody there for a demonstration?

14 A. You know, I don't recall, and I don't think so.

15 Q. Okay. Did you ever take anyone to Puerto Rico for a
16 demonstration?

17 A. I don't think so.

18 Q. Now, I think we previously got a little mixed up.

19 A. Yeah.

20 Q. A little failure to communicate here.

21 A. It's getting a little late now. Aged people.

22 Q. At DePoo, you said after they built their new patient
23 tower --

24 A. Yes.

25 Q. -- which would have been '83 or '84?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

141

1 A. Don't quote me on that date.

2 Q. But certainly not prior to that?

3 A. Right.

4 Q. Who at Florida Keys would have known about your work
5 for DePoo, anyone?

6 A. Who at Florida Keys? Everybody would have. Anyone
7 that was there.

8 Q. How would they know?

9 A. Because I told them.

10 Q. So at the time you were working at DePoo, you were
11 also the manager for that area over at Florida Keys
12 and you still had your 17 employees, or am I missing
13 the timeline?

14 A. You know what? As we are going I remember another
15 hospital I had, too, at the same time.

16 Q. Good.

17 A. If you want another one, Fisherman Hospital.

18 Q. Fisherman?

19 A. At Marathon. Somehow that slipped my mind.

20 Q. We will come back to Fisherman. I appreciate --

21 A. I wanted to clarify because we are going --

22 Q. So you were the manager at this time of the 17-person
23 department, if I understand you correctly?

24 A. (Witness indicating.)

25 Q. You said everybody would have known because you would

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

142

1 have told them. Did you seek permission from the
2 administrator to go over to DePoo?

3 A. I told -- we discussed it and he said no problem.

4 Q. Okay. Now, the Marathon Hospital -- Fisherman
5 Hospital, that was another '79 hospital that you had?

6 A. I don't remember the exact date. I'm going guess that
7 was pretty close to the same time frame.

8 Q. Okay.

9 A. It was '79, '80, '81. Again, it was an IBM favor,
10 they called and said, help.

11 Q. When did you cease having a relationship with that
12 hospital?

13 A. They were purchased out by an another facility, and
14 maybe '83, '84.

15 Q. So Mr. Sanchez wouldn't have had any involvement with
16 this hospital?

17 A. The only -- he was their -- he did their Medicare cost
18 reports.

19 Q. Was he an accountant?

20 A. He was a -- he was everything. He used to work for
21 Blue Cross and he knew Medicare.

22 Q. Now, when they ceased using your source code, did you
23 remove the source code by pressing the button?

24 A. No.

25 Q. Why not?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

143

1 A. I don't recall.

2 Q. Well, did you do a demonstration for the Fisherman's
3 Hospital or was that just a -- we are in a hurry, we
4 need something?

5 A. If I recall, they were already operating a system and
6 I just added software to their existing system to make
7 it functional. So I paid -- I actually charged them a
8 fee and it was a nominal fee. Then I charged them per
9 hour, plus expenses, and I -- maybe I did two months
10 worth of work there, three months.

11 Q. This was while you were working at both DePoo and at
12 Florida Keys?

13 A. Uh-huh.

14 Q. The software you added, would that have been taken
15 from the Florida Keys system?

16 A. Again, I don't like the word taken.

17 Q. Obtained.

18 A. It was obtained from me.

19 Q. It was on --

20 A. It was similar to the software that was running on the
21 machine in Florida Keys.

22 Q. I mean, we can debate the language --

23 A. Sorry.

24 Q. -- all day long. It was housed on the Florida Keys --

25 A. Okay.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

144

1 Q. -- box, correct?

2 A. Yes.

3 Q. And you copied it from the Florida Keys box and
4 installed it onto the Marathon box, correct?

5 A. I guess that's a fair...

6 Q. That included the HFMA proprietary software from IBM?

7 A. Yeah, I believe at that time they already
8 had -- that's why I'm saying Fisherman's would have
9 purchased that from IBM possibly at that time. That's
10 why I'm saying I fixed their programs.

11 MR. SMITH: Just -- the word "proprietary,"
12 I don't know whether you and the witness have an
13 understanding of what you meant by that word.

14 MR. DENNEN: I think we do, owned by IBM is
15 when I say proprietary.

16 BY MR. DENNEN:

17 Q. Source code, again, how long does it take to
18 de-install that source code?

19 A. Minutes.

20 Q. Ten minutes?

21 A. It could be ten minutes, half hour. It's just...

22 Q. And why would it be important to you to de-install the
23 source code?

24 A. It's -- well, it's really not that important depending
25 on, you know, the honesty of the client. How is that?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

145

1 Q. So what you are saying is, that you had no reason to
2 remove the source code?

3 MR. SMITH: Object to the characterization
4 of the witness's answer.

5 BY MR. DENNEN:

6 Q. Going back to my question, was there a reason to
7 remove the source code?

8 A. I didn't feel that the customers were going to try to
9 sell it so, you know, it's -- I didn't think it was
10 any profit to them. They weren't in the software
11 business. They were in the hospital business.

12 Q. So what you are saying, the source code has no value?

13 A. I believe you just put a word in my mouth.

14 Q. I'm trying to understand --

15 A. If you don't sell it, it has no value. If you are
16 going to sell it to somebody else, it has a value, or
17 you are going to use it to make a profit, it has a
18 value. If you are not in that business, it doesn't
19 really have a value. The object code does because you
20 will use it in your facility.

21 Q. Okay. Again, I guess I'm trying to understand, it
22 takes roughly ten minutes to remove source code from a
23 computer, at this time, the System 36. And you said
24 sometimes you did it, sometimes you didn't do it. And
25 I'm trying to understand is --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

146

1 A. Usually.

2 MR. SMITH: Wait for --

3 BY MR. DENNEN:

4 Q. What I'm trying to understand is, why did you do that
5 if it had no value?

6 A. I would do it at the request of the user. For
7 instance, Florida Keys Hospital asked me to remove the
8 source code and the object code and files related to
9 that information.

10 Q. That's one installation. Does the source
11 code -- access to the source code enable someone to do
12 anything with it?

13 A. If they had the source code, they could modify it and
14 if they were in the business, make a profit from it.

15 Q. Well, if I'm just a hospital and I have the source
16 code, and I have a programmer, intelligent programmer,
17 can that programmer take that source code and continue
18 making improvements and modifications to the software?

19 A. If he was pretty sharp, probably.

20 Q. In fact, that's what you did at Florida Keys, wasn't
21 it?

22 A. Make changes to -- modify an existing system, yes.

23 Q. That's what your job --

24 A. Yes.

25 Q. -- at Florida Keys --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

147

1 A. Yes.

2 Q. -- was, to take software and do that?

3 A. Right.

4 Q. That's why it's important to you to have the source
5 code removed from the box, right?

6 A. You live and you learn.

7 Q. When you put source code onto a box -- let's go back
8 to McDougal, because you left your source code on his
9 box, and he is in the business. You said that you
10 didn't feel compelled to even have your attorney ask
11 him to certify that he removed it; is that correct?

12 A. Yes.

13 Q. What other steps -- what steps, if any, did you take
14 to protect that source code from third parties?

15 A. I -- for the software that I specifically wrote, I
16 would put copyright notices in that software and I
17 would put my name in that software. If it was
18 software I had modified that had belonged to a third
19 party, I would leave those notices in for that third
20 party.

21 Q. So for the Florida Keys software, you would leave the
22 notices in that -- for the software they already
23 owned?

24 A. Yes, for the IBM software, there would have been
25 copyright notices by IBM. Although IBM allowed us to

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

148

1 use it, you would still be required to leave those
2 notices in.

3 Q. You had -- I guess I misunderstood. I thought you
4 didn't have an agreement with IBM, was that incorrect?

5 A. I -- it was a -- IBM was not in the software business.
6 They wanted to sell boxes.

7 Q. I understand that.

8 A. I don't believe -- I don't even know how much they
9 charged for their software, if anything at all. If
10 they were installing a system, they would give
11 software with that system to sell that system.

12 Q. Right.

13 A. If I installed the system I would ask IBM's permission
14 and they were aware of what programs were going in
15 those boxes.

16 Q. Okay. And did you obtain that in writing?

17 A. I don't believe I did.

18 Q. Did you ever ask IBM for something in writing that
19 would confirm your right to do that?

20 A. I -- I don't -- I don't remember if I did.

21 MR. DENNEN: Let's take a break.

22 (A recess was taken)

23 BY MR. DENNEN:

24 Q. We are back from our break. I think when we left on
25 our break we were discussing the steps that you took

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

149

1 with respect to the removal of software. Let's talk
2 about something new for a change.

3 I want to ask you one more question, can
4 you delete the software remotely, delete the source
5 code remotely?

6 A. Yes, with a preface.

7 Q. What is that?

8 A. As long as you have access.

9 Q. Now, in this lawsuit you have named as a defendant Tom
10 Givens, who is sitting next to me. Tell me about the
11 first time you met Mr. Givens. When did that occur?

12 A. I believe the first time was in Miami.

13 Q. Where in Miami?

14 A. It was at some bar, and I remember discussing medical
15 records in prisons and how it would be another
16 business.

17 Q. What was the significance of medical records in
18 prisons?

19 A. The fact that since they didn't have a medical records
20 system, as such, if you put a prisoner in with a very
21 ill prisoner, let's say, somebody for a minor crime,
22 and he caught a disease, and died, you know, did he
23 have a lawsuit against the prison system for not
24 protecting him?

25 Q. Now, how were you introduced to Mr. Givens?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

150

1 A. You know, I don't recall.

2 Q. Was it a planned meeting?

3 A. I believe so, and I don't recall. I just recall that
4 meeting because of the uniqueness of the concept,
5 which is still a relevant concept. I don't think they
6 have a good system now.

7 Q. Was there anyone else present for that meeting?

8 A. You know, I don't recall.

9 Q. Do you recall what year this was?

10 A. No. It was '82, '83.

11 Q. Now, you said it was a planned meeting, would you have
12 called Mr. Givens?

13 A. You know, I don't recall. Again, I will reiterate, I
14 remember the subject matter because something like
15 that sticks in your mind.

16 Q. So you remember the subject matter --

17 A. And you know the basics of the meeting, I don't
18 remember.

19 Q. Okay. Is that just because of the passage of time?

20 A. Passage of time and, again, it was a unique subject
21 matter. Things like that would stick in your memory.

22 Q. I guess what I'm saying is, because of passage of
23 time, am I understanding correctly you can't really
24 remember many, if any, of the details --

25 A. Exactly. You know, I don't know if we said, hey,

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

151

1 let's do this. Nothing.

2 Q. Sure. So that was the first meeting, and you are
3 saying that would have been '82 or '83; is that
4 correct?

5 A. Yeah.

6 Q. When was the next meeting?

7 A. It was in '83.

8 Q. Where was that?

9 A. That was in Nashville.

10 Q. Do you recall what location it was?

11 A. That was in the American Medical Center offices.

12 Q. Again, how was that meeting set up?

13 A. That was arranged by Tom.

14 Q. When you say Tom, are referring to Mr. Givens?

15 A. Mr. Givens.

16 Q. Did he call you?

17 A. I believe so. Again, that's where it gets to be a
18 sketchy recollection on it.

19 Q. What were you asked to do?

20 A. To demonstrate my medical records system and to
21 discuss a unique business opportunity.

22 Q. Who was the demonstration of the medical records
23 systems to be to?

24 A. To Mr. Givens.

25 Q. Anyone else?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

152

1 A. I believe the only other person who was there was his
2 secretary.

3 Q. What was the business opportunity?

4 A. That he was -- he had several hospitals, I believe it
5 was seven at the time, is the number that sticks in my
6 mind, that all needed a medical records system because
7 of the fact that DRGs and UB82s, which is the new
8 billing format, was going to be a requirement at all
9 facilities.

10 And that since he had a -- I had an
11 integration system that would take and integrate my
12 medical records into existing hospital HIS systems,
13 that this was a good fit.

14 Q. When you say HIS systems, what does HIS mean?

15 A. Hospital Information System.

16 Q. UB82, what is a UB82?

17 A. Uniform billing, and '82 would be the date that the
18 form was created.

19 Q. Is that a federal government form?

20 A. Yes.

21 Q. Who promulgates that? Who requires you to use that?

22 A. It was required -- it was a uniform billing form for
23 all the insurance companies. Prior to that, they
24 really didn't have -- each insurance company had their
25 own form.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

153

1 Q. Was that a Medicare form?

2 A. It was a uniform billing form. I'm trying to --

3 Q. I understand, and not to confuse it, Medicare is a
4 payer?

5 A. Medicare is a payer so it would be the same form for
6 Medicare, for Blue Cross, for Aetna, for whoever.

7 Q. And Medicare was requiring the UB82?

8 A. I believe, again, this is going to be stressing the
9 memory.

10 Q. Sure.

11 A. I thought it was supposed to be all insurance
12 companies were required to use this. The only ones I
13 think had a bypass would have been Medicaid.

14 Q. Okay.

15 A. Again, that's to the best of my recollection.

16 Q. Only Medicaid --

17 A. Because Medicaid went state-by-state.

18 Q. Sure. You referenced the term DRG, what is that?

19 A. Did I?

20 Q. Yes, you did. What is that?

21 A. DRG is a term called Diagnosis Related Group.

22 Q. What is your understanding of what a DRG or Diagnosis
23 Related Group is?

24 A. It was a way of classifying patients into certain
25 disease states. For example, heart failure or

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

154

1 congestive heart failure.

2 Q. So let me -- again, using your example of congestive
3 heart failure, would some type of code be applied to
4 that? Would it be a numerical code?

5 A. It would be a value.

6 Q. How is that value reflected?

7 A. What do you mean?

8 Q. Numbers or --

9 A. It would be a number.

10 Q. What would be an example of a number? Would it be
11 AB123 or --

12 A. One.

13 Q. Okay.

14 A. I believe the original number was 1 to 170, or 469 I
15 think was the bad one, but don't quote me.

16 Q. 1 to 170?

17 A. 1 to 469 -- 470, I'm sorry.

18 Q. 1 to 470?

19 A. Yeah, that's just --

20 Q. That code would be assigned but, basically, depending
21 upon what the person who was at the hospital for?

22 A. Based on their diagnoses and procedures performed to
23 that patient.

24 Q. So there would be a different code for an
25 appendectomy?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

155

1 A. In simplified terms, yes.

2 Q. Was that promulgated by Medicare --

3 A. Yes.

4 Q. -- the DRG?

5 A. Yes.

6 Q. Do you recall when that occurred?

7 A. When they decided to use it or when it was started
8 being created?

9 Q. When Medicare said to the hospital you have to use it.

10 A. I believe it was '83.

11 Q. Now, is there something called a CPT code?

12 A. Yes.

13 Q. What is that?

14 A. That was the physician terminology for procedures.

15 Q. So a CPT is a similar to thing to a DRG?

16 A. No.

17 Q. I'm sorry. Is it involved at all in any of this?

18 When I say any of this, the Medicare requiring DRGs.

19 A. It's not in -- it's not used, no.

20 Q. ICD9s?

21 A. ICD9s are used to create a DRG.

22 Q. Okay. What are DRGs used for in a hospital? Why did
23 Medicare want this DRG on the billing?

24 A. For reimbursement.

25 Q. So they are used to get paid?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

156

1 A. Yes.

2 Q. Prior to this period of time Medicare paid on a cost
3 basis, did it not?

4 A. That's what I believe, yes.

5 Q. So really DRG is a part of what they refer to as a
6 prospective pay system?

7 A. That's not -- prospective pay is for outpatients.

8 Q. Okay. I'm sorry. So Medicare was going from a
9 cost-based system to a system that basically paid
10 based upon a code, a DRG code, correct?

11 A. In the simplest form, yes.

12 Q. I'm trying to be simple.

13 A. Okay.

14 Q. I'm sure we can bring in coding experts who will
15 explain it. That's why this was important to AMC,
16 correct?

17 A. Yes.

18 Q. So who created DRGs?

19 A. Who created?

20 Q. Yes.

21 A. DRGs were originally -- that's a hard question.

22 Q. Okay.

23 A. They came from another source originally, without
24 going into too much detail. They were based on a
25 system out of New Jersey that were not DRGs, and I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

157

1 don't remember that system's name.

2 Q. I seem to remember reading somewhere that Yale
3 University --

4 A. Yale University.

5 MR. SMITH: Wait for the question.

6 BY MR. DENNEN:

7 Q. -- did something?

8 A. I'm sorry, what was the question.

9 Q. What is your understanding of Yale University's
10 involvement with the creation of DRGs?

11 A. Helped create the routines to group the ICD9 codes
12 into DRGs.

13 Q. So you said the DRG system was based on a system that
14 was being used in New Jersey?

15 A. Yeah.

16 Q. And Yale University somehow modified it into DRGs?

17 A. That took that concept, which was a code for disease,
18 and created a new system that was to be more accurate.

19 Q. That new system is a system called DRGs or Diagnosis
20 Related Group?

21 A. Yes.

22 Q. I believe you said in 1983 Medicare said to all
23 hospitals you are going to get paid now on DRGs; is
24 that correct?

25 A. I can't tell you if that's absolutely correct. I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

158

1 don't know if there were -- I'm guessing there were
2 institutions that had bypasses. I don't know how
3 Medicare works, and I didn't know if it --

4 Q. If you knew the answer to that, I think --

5 A. But it might have been some would have went on
6 immediately, some would have had a couple of years.

7 Q. A transition period may have been in place but that
8 was 1983?

9 A. We would start computing the DRG.

10 Q. So you begin computing DRGs. You met with Mr. Givens
11 about the DRG issue, and the new requirement these
12 seven hospitals had. Did he make a proposal or did
13 you make a proposal or --

14 A. To the best of my recollection, I discussed a figure
15 of \$10,000 per system that he would do the
16 installation and after he installed them, he would pay
17 me.

18 Q. Did you provide that in writing?

19 A. I believe we shook our hands on it.

20 Q. What was his response?

21 A. It was a good deal for both of us.

22 Q. So from your perspective, it was a done deal?

23 A. From my perspective I was under the impression,
24 without going into too much detail, that he would
25 install it in one system to see how it went. And if

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

159

1 it was good for him, he would do additional ones.

2 Q. Now, when you say for him, you are referring to AMC,
3 correct?

4 A. Right.

5 Q. And did you ever receive anything in writing from
6 AMC --

7 A. No.

8 Q. -- confirming that agreement?

9 A. No.

10 Q. I guess to do this demonstration you had loaded the
11 medical record software onto the AMC computer system,
12 correct?

13 A. Yes, I did.

14 Q. So what happened at the conclusion of that meeting?

15 A. I also gave him some diskettes with additional
16 soft -- with the software on them, and we had
17 discussed that he would go ahead and install them on a
18 test facility and he would get back with me.

19 Q. So you gave him diskettes with the software on it,
20 correct?

21 A. Yes.

22 Q. And that included the source code, correct?

23 A. Yes, I did.

24 Q. Did you require him to sign a confidentiality
25 agreement or nondisclosure agreement of any kind?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

160

1 A. I did not.

2 Q. Okay. And so did you then return to Key West,
3 Florida?

4 A. Yes.

5 Q. What was your next communication with Mr. Givens?

6 A. You know, I don't recall another communication with
7 him.

8 Q. Did you have any communication with anyone else at
9 AMC?

10 A. No, not to my recollection.

11 Q. Did you ever contact anyone, Mr. Givens, or anyone at
12 AMC and say, hey, where is my \$70,000?

13 A. No.

14 Q. Did you ever call and ask them to take the software
15 off the box and return the diskettes --

16 A. No.

17 Q. Let me finish my question. Did you ever ask anyone at
18 AMC to return the diskettes that you said you gave to
19 them?

20 A. No.

21 Q. Did these diskettes have the -- for want of a better
22 term, the fault in them that you mentioned earlier
23 that wouldn't allow someone else to run them?

24 A. Actually, not, because he was to install them so I had
25 to take -- remove that.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

161

1 Q. If I understand you correctly, you are saying you just
2 forgot about it, correct?

3 A. You know, I was quite busy at the time, and I assumed
4 that if he used it, he would contact me.

5 Q. So, again, I just want to make sure that the record is
6 clear, you had no further communication, telephone,
7 fax, written correspondence, with Mr. Givens over the
8 AMC after you returned back to Florida?

9 A. Not that I recall.

10 Q. What did you do to ensure that the source code was not
11 copied, or otherwise improved upon, that you provided
12 to AMC?

13 A. Well, I had copyright notices in my software. I
14 assumed that he wouldn't use it without my knowledge.

15 Q. Now, you have a copy of that software that you gave to
16 Mr. Givens, the AMC diskette?

17 A. You know, it's -- I don't.

18 Q. You do not?

19 A. I do not.

20 Q. Okay. How can someone verify that you included the
21 copyright notice on the diskette that you gave to Mr.
22 Givens?

23 A. Some older code that I found, again, not all the code,
24 because I found some old code that had been written at
25 that time frame.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

162

1 Q. Okay. But you don't have a copy of the specific item
2 you gave to Mr. Givens?

3 A. I do not have a specific copy of the items I gave Mr.
4 Givens.

5 Q. Okay. So, therefore, if Mr. Givens says there was no
6 copyright notice on that code, what is your response?

7 A. That he is lying.

8 Q. If Mr. Givens said he had numerous conversations with
9 you, is he also lying about that?

10 A. Again, if he had numerous conversations with me, it's
11 quite possible, because I had numerous conversations
12 with a lot of clients. I was handling quite a few
13 hospitals, so I had conversations over the years, so,
14 again, I said I didn't recall.

15 Q. What you are saying is that Mr. Givens would not be
16 lying about that, you just have no recollection?

17 A. Exactly.

18 Q. Now, just so the record is clear, you do not have a
19 copy of any of the information, the diskettes or any
20 of the -- a hard copy of that that you gave to Mr.
21 Givens, correct, sir?

22 A. I have copies of several programs.

23 Q. Right.

24 A. That are similar in nature and would be -- are they
25 the exact copies of the programs? I wouldn't know.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

163

1 Programs have changed.

2 Q. Sure. When did you start using DRGs in your code?

3 A. I started working with Yale University in 1979.

4 Q. How did you obtain that relationship?

5 A. They were looking at facilities to help gather medical
6 records information, and I don't recall exactly how
7 the contact was made, but I was one of those
8 individuals. It could have been through IBM.

9 Q. Who was your contact at Yale?

10 A. Again, in all honesty, I would call Yale and everybody
11 would pick up the phone, and it was -- it was a Ph.D.
12 of some sort.

13 Q. You don't remember any specific person?

14 A. We would send the files back and forth and I would run
15 tests and send changes back and forth, and we did this
16 for a period of time.

17 Q. So Yale was providing information to you for you to
18 run tests on; is that correct?

19 A. They provided what they call the bit masks. The
20 original groupers were in bit masks, and without
21 getting technical, they were files that were basically
22 looked like computer language.

23 Q. Okay.

24 A. And we would run sample data through, and then we
25 would test that data to see how it came out.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

164

1 Q. When in 1979 did you begin working with Yale?

2 A. At Yale, it's going to be -- to give you a specific
3 month, I wouldn't know, but it was over a series of
4 time. Remember, this was over several years. It
5 started here and until Medicare made DRGs, what was to
6 be used, we went through literally hundreds and
7 thousands of patients and data to get to those bit
8 masks.

9 Q. Okay. So you would have started when you were an
10 employee at Florida Keys on this project?

11 A. I did, yes.

12 Q. Again, just so I understand, was Mr. Givens interested
13 in your DRG grouper, was that what was significant for
14 his AMC hospitals?

15 A. Actually, it would have been the whole medical records
16 system. There was not just one portion of it. It
17 would have been the way the diagnosis codes were
18 organized, the database functionality.

19 Q. After you left Mr. Givens office at AMC, when is the
20 next time you heard of Mr. Givens?

21 A. When I lost the sale at Rawlins Hospital -- or not
22 lost the sale, I actually lost my client. Actually
23 didn't hear of him. I got a database file in an
24 e-mail.

25 Q. I'm sorry, just one second. Rawlins Hospital, you

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

165

1 lost that client. Why did you lose that client?

2 A. The CFO wanted a different computer system.

3 Q. Why did the CFO want a different one?

4 A. Conflict of interest.

5 Q. What was the conflict of interest?

6 A. We didn't like each other.

7 Q. What was the nature of that conflict or that dislike?

8 A. She was running the hospital into the ground.

9 Q. Who is she?

10 A. Flo Kostic.

11 Q. Flo K-O-S-T-I-C-K?

12 A. I don't know how to spell it, T-I-C, I think.

13 Q. What did the computer I.T. person have to do with the
14 financial affairs of the hospital?

15 A. She was the CFO, chief financial officer.

16 Q. How did that relate to you providing computer
17 programming?

18 A. She decides what computer system the hospital uses.

19 Q. I guess what was -- why were you all interacting,
20 maybe that's the better question? You said you didn't
21 like each other. What I'm trying to figure out is,
22 why would that matter?

23 A. Well, she was hired. She was a new employee. I had
24 been there for several years. She didn't like my
25 computer system, so she works for the hospital, I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

166

1 don't, they changed computer systems.

2 Q. It wasn't a personal dislike, it was --

3 A. In addition, it was a personal dislike.

4 Q. How did that personal dislike manifest itself? Did
5 you get into shouting matches? Did you get into
6 boxing matches or did you respectfully agree you
7 needed to go your own way?

8 A. It was more like respectfully agreed we need to go our
9 own way.

10 Q. So you lost that client because the CFO basically
11 didn't like you?

12 A. Correct.

13 Q. And you don't know why she didn't like you?

14 A. I didn't have hair. I don't know.

15 Q. So before that, which would have been 2003, you had
16 never heard of Tom Givens or Healthcare Management
17 Systems?

18 A. I had heard the name Healthcare Management Systems.

19 Q. In what context had you heard --

20 A. In '97.

21 Q. Okay. Tell me about that.

22 A. They were competing against me the hospital in
23 Rawlins, Wyoming.

24 Q. Other than this one instance, you had never heard of
25 Healthcare Management Systems?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

167

1 A. No, not to my recollection.

2 Q. Who are your primary competitors? I guess you are not
3 in that business anymore, so who would have been at
4 the time Goldman & Goldman's primary competitors?

5 A. Well, if I recall there was Dairyland, J & S Data,
6 HBOC.

7 Q. I'm sorry H --

8 A. BOC.

9 Q. V or B?

10 A. B, HBOC.

11 Q. Any others?

12 A. Some bigger systems that wouldn't be competitors, like
13 what I call Medatech or Cerner, these other big
14 systems.

15 Q. Is that based on bed size of the hospital?

16 A. Sometimes but -- yeah.

17 Q. What is, kind of, your bed size, what would have been
18 your bed size at the time?

19 A. I would have gone up to 200 beds.

20 Q. What was the largest hospital you had on your system?

21 A. I had the Key West Hospital, with the two hospitals
22 combined, was probably about 200 beds all combined.

23 Q. What would have been the smallest?

24 A. Well, DePoo was 13 beds originally.

25 Q. What about the others, the other hospitals, Michigan

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

168

1 hospitals?

2 A. They ranged from 25 beds to 100 and I think Mecosta,
3 that is 125, 150. I think they are a little bigger
4 now because they got Medatech.

5 Q. Sounds like a lot of these would have been Hill Burton
6 Hospitals, are you familiar --

7 A. That's just a payment.

8 Q. Well, actually, a law they were formed under.

9 A. The hospital in Puerto Rico was actually quite large.

10 Q. How large was it?

11 A. It was -- I think it was 149 beds but it was always
12 full, so it was more like a -- the hospital that
13 replaced it was 600 beds.

14 Q. But you didn't have a system on the replacement
15 hospital, correct?

16 A. No, that's -- it went to 600 beds.

17 Q. Okay. I guess -- what did you become aware of in 1997
18 when you were making the bid for Rawlins, Wyoming?

19 A. That there was several companies competing. I
20 believe, Dairyland was one, HMS was one, and myself.

21 Q. Okay. Did you have an opportunity to review what HMS
22 was doing?

23 A. Not really. I was told that this was some
24 similarities.

25 Q. Who told you that?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

169

1 A. The chief financial officer.

2 Q. Who was that?

3 A. I'm getting a little tired now, so Jeff Gullaher.
4 Please don't ask me to spell it.

5 Q. I'm going to spell it G-U-L-L-A-H-E-R.

6 Now, would he have been the CFO at the
7 time, I guess, there that was replaced by the lady,
8 Flo Costic?

9 A. There was several replacements after he left.

10 Q. Do you know where Mr. Gullaher is now?

11 A. I believe he is in Montana.

12 Q. Is he still working at a hospital?

13 A. Yeah, I believe he is working for several hospitals.

14 Q. Would that be in-house or as a consultant, do you --

15 A. I believe he is chief financial officer, maybe, for
16 the group. I'm not really sure of his exact title.

17 Q. Do you know where in Montana?

18 A. No.

19 Q. That's a big state.

20 A. (Witness indicating.)

21 Q. Now, what did -- what exactly did Mr. Gullaher tell
22 you?

23 A. He said that there were similarities in the system.

24 Q. What did you say in response?

25 A. Well, that's nice.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

170

1 Q. Did he tell you what kind of similarities?

2 A. He said some of the reports looked similar.

3 Q. Now, when you say reports, you are referring to the
4 statistical reports generated by the --

5 A. Medical records?

6 Q. Yes.

7 A. Yes.

8 Q. Did he show you those reports?

9 A. No.

10 Q. Did you ask to see those reports?

11 A. You know, I don't recall.

12 Q. Was there any reason he would not have shown you those
13 reports?

14 A. Yeah, because I got the contract.

15 Q. I mean, to your knowledge --

16 A. I don't even know if he had a copy of them.

17 Q. Okay.

18 A. I mean, when you get a demo you see reports. I don't
19 even know if he really had a copy of them. I just --

20 Q. Did you check on the HMS --

21 A. Actually, I did. I tried to look them up on the
22 Internet.

23 Q. Okay.

24 A. And --

25 Q. What did you discover?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

171

1 A. Nothing.

2 Q. What else did you do? Did you call anybody in the
3 industry?

4 A. Actually, I called an attorney to do a research on
5 them.

6 Q. Who was that?

7 A. I don't recall his name. It was from California.

8 Q. Do you recall where in California?

9 A. No.

10 Q. Did you pay this attorney?

11 A. I actually sent him a retainer of \$5,000.

12 Q. What was that for?

13 A. To do some research and find out if there was any
14 validity.

15 Q. Any validity to what?

16 A. To the fact it -- maybe it was my software.

17 Q. Did you perform that research?

18 A. He -- I got, he didn't know back, and he actually
19 returned my retainer.

20 Q. This was in 1997?

21 A. Yes.

22 Q. He returned your retainer?

23 A. Yes.

24 Q. How quick a turnaround was that?

25 A. You know, I couldn't give you exact times.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

172

1 Q. Was it 30 days, was it 6 months?

2 A. Again, I was busy installing a system. At that time,
3 hey, I just got a contract. I'm a happy individual.

4 Q. You were installing the system in --

5 A. In Rawlins, exactly, and I was installing the system
6 in Douglas.

7 Q. So, you, to use your words were fat and happy with two
8 contracts --

9 A. I had the contracts. I'm assuming that maybe there
10 was no validity to any of it.

11 Q. So you didn't contact any other attorneys?

12 A. No.

13 Q. Did you try to obtain any information about HMS from
14 Jeff Gullaher, like where they were located?

15 A. Not that I recall.

16 Q. Is it fair to say you retained an attorney and the
17 attorney said, I don't -- in your words, I don't know
18 and you just --

19 A. I just assumed that there was no validity to it and I
20 moved on, exactly correct.

21 Q. Now, there were two hospitals. One was Douglas,
22 Wyoming?

23 A. Yeah.

24 Q. Did Mr. Gullaher have anything to do with that other
25 hospital?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

173

1 A. Nope.

2 Q. Were they owned by separate entities?

3 A. Yes.

4 Q. Just to be -- well, let's take a break now.

5 (A recess was taken)

6 (Discussion off the record)

7 MR. DENNEN: Back on the record. We have
8 just had a discussion with counsel for the plaintiff
9 in this case, Joel Goldman, in which he has requested
10 that I provide a limit on a second day of four hours
11 and I have respectfully declined that request. I have
12 informed him that I don't think it would be more than
13 probably 9:00 to 3:00 with an hour break for lunch but
14 at this point in time cannot commit to that, and we
15 have agreed we will go for an additional hour on this
16 deposition and adjourn at that time to come back at a
17 later date, subject to going before the magistrate or
18 the judge if it's appropriate, if necessary.

19 MR. SMITH: And I would just add that I
20 have requested that counsel give some sort of time
21 limit on the length of the continued deposition and
22 counsel has declined to provide any cap on the
23 duration of any continued deposition indicating that
24 it could go three, four more days, which plaintiff
25 finds objectionable.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

174

1 MR. DENNEN: I think, just so the record is
2 clear, that the statement that it would be three to
3 four more days was dependent upon the answers of the
4 plaintiff to the questions asked. And I also stated
5 that I couldn't imagine that it would last longer than
6 the five hours previously mentioned. But then
7 depending upon the information that the plaintiff
8 provided, it could go longer. It's 5:00, let's go to
9 6:00.

10 BY MR. DENNEN:

11 Q. Who was your contact, Mr. Goldman, at the Douglas,
12 Wyoming hospital?

13 A. You know, I don't recall the name. It was the chief
14 financial officer.

15 Q. It would be the CFO?

16 A. Yes.

17 Q. Is that person still the CFO, to your knowledge?

18 A. No.

19 Q. Now, I believe we have discussed at length a variety
20 of things. I want to show you a document, I
21 believe -- I'm going to show this to you and ask you
22 to take a look at that document, please, sir. Tell me
23 if you recognize that document.

24 A. Yes, sir, I do.

25 Q. Tell me what that document is, please.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

175

1 A. It is a program that I wrote and submitted to the
2 copyright office.

3 Q. I might not have given you -- is that your signature
4 on this document?

5 A. Yes, it is.

6 Q. And that signature is dated September 2nd, 2004, is it
7 not, sir?

8 A. Yes, it is.

9 Q. And in this document you reference a creation date, I
10 believe, of September 30th, 1997 for the date of
11 publication, is that correct, sir?

12 A. October 1st.

13 Q. I may be looking at a different one. Okay. October
14 1st, 1979, do you see that, sir?

15 A. Yes.

16 Q. Again, this was -- there is a date stamp at the
17 bottom, is there a date stamp on your copy?

18 A. Date stamp on what? What page are you talking about?

19 Q. Well, I think what has happened, in the copying
20 process they have gotten out of order. I ask you to
21 take a look at that.

22 MR. WALTERS: Are you going to mark that?

23 MR. DENNEN: Not yet.

24 BY MR. DENNEN:

25 Q. Now, looking at the bottom of that do you see a date

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

176

1 stamp of December 16, 2004?

2 A. This one has --

3 Q. Excuse me?

4 A. This one doesn't have a date stamp.

5 Q. I'm asking you to take a look at the one in your hand.

6 A. Okay.

7 Q. Now, I believe it has a second page to it dated
8 September 2nd, 2004?

9 A. Yes.

10 Q. Do you see that, sir?

11 A. Yes.

12 Q. That is your signature?

13 A. Yes.

14 Q. And the document itself says that you first published
15 this work on October 1st, 1979. Do you see that, sir,
16 at number 3?

17 A. Yes.

18 Q. And why did you wait some 25 years to file this
19 certificate of registration?

20 A. Actually, I didn't believe it was necessary because it
21 was a program that would be continually changed.

22 Q. Okay. When you say this wasn't necessary?

23 A. What I consider this is a work in progress.

24 Q. Okay. So what made you decide to go ahead and file
25 with the copyright office?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

177

1 A. I was told it was necessary.

2 Q. Okay. Now, I'm going to show you -- if we could,
3 let's mark that, that's two pages. I believe it's
4 Exhibit Number 204.

5 MARKED BY THE REPORTER:

6 DEPOSITION EXHIBIT NUMBER 204

7 BY MR. DENNEN:

8 Q. That's the copyright registration. I need a stapler.

9 MR. SMITH: There is one behind you.

10 BY MR. DENNEN:

11 Q. Okay. Mr. Goldman, I'm going to leave that in front
12 of you.

13 I'm going to show you a wealth of
14 information and ask you to take a moment and look at
15 this. I'm going to ask you as you are looking at
16 that, do you recognize that?

17 A. Yes. Well, you want me to say every page?

18 Q. Yes. Take a moment.

19 A. I will say that the majority of it as I look through
20 it --

21 Q. You recognize the majority of it --

22 A. Yes.

23 Q. And what is that?

24 A. These are programs, part of some of the programs that
25 I had written.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

178

1 Q. Why don't you give that back to me, sir?

2 A. Okay.

3 Q. Because we are going to get a little bit confused.

4 When I say a little bit confused, because
5 my secretary put this together and maybe didn't do too
6 good of a job.

7 I'm going to show you a document. Do you
8 see a stamp there, sir?

9 A. Yes, I do.

10 Q. Library of Congress?

11 A. Yes.

12 Q. Can you tell me -- or maybe I should ask you, is this
13 a document you submitted to the copyright office as an
14 exhibit to the document we have identified previously
15 as 204?

16 A. I believe so.

17 Q. Let's mark that as Exhibit Number 205.

18 MARKED BY THE REPORTER:

19 DEPOSITION EXHIBIT NUMBER 205

20 BY MR. DENNEN:

21 Q. Sir, I would like for you to leave Exhibit Number 205
22 in front of you. And go, if you would, to the first
23 page which has the code in it, if you would, sir,
24 please turn to Exhibit Number 205.

25 A. Okay.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

179

1 Q. And go to the first page with the code in it.

2 A. Okay.

3 Q. You see that it says: Copyright, Joel Goldman, 1979?

4 A. Yes.

5 Q. Then on the side it has UGDRG. Tell me what that
6 UGDRG is?

7 A. It's a name of a program.

8 Q. What is the program?

9 A. It actually does a -- it's part of a group of other
10 programs and what it would have done -- let me just
11 review it. It would have updated a screen. It would
12 update information on a computer screen.

13 Q. The DRG reference is to Diagnosis --

14 A. Yes, it is.

15 Q. Going down to the line 18 on that first page, do you
16 see line 18?

17 A. Yes, I do.

18 Q. Do you see line 20 on that same page?

19 A. Yes, I do.

20 Q. What is the reference in line 18 to?

21 A. Line 18 is a file called DX tab, which is one of the
22 grouper files.

23 Q. Is that part of the grouper files that have been part
24 of public domain files that United States Government
25 allows by virtue of the DRG requirement?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

180

1 A. Yes.

2 Q. The same with number 20?

3 A. Yes.

4 Q. Those are the public domain files --

5 A. I don't know if they are called the same name.

6 Q. Okay. You and I are on the same wavelength.

7 Going down to 31, do you see 31 right

8 there?

9 A. Yes.

10 Q. Is that what is referred to as an HFMA file?

11 A. That is an interface file, correct.

12 Q. But it's in the HFMA program?

13 A. It is.

14 Q. Just looking at what is in front of you, I'm going to

15 turn to a page 448, or line 448, I'm sorry. Do you

16 see in line 0448, it says, AMA diagnosis?

17 A. Yes.

18 Q. What does that refer to?

19 A. They left against medical advice.

20 Q. So AMA for that purpose is against medical advice,

21 it's not the American Medical Association?

22 A. Yes.

23 Q. Okay. I just wanted to clarify it.

24 Again, all of these -- if you would, sir,

25 if you go to the line that has 937 on it. Do you see

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

181

1 that, sir?

2 If you go to the next page -- let me go up.

3 If you go to 932, see line 932, it says DRGDSC?

4 A. Uh-huh.

5 Q. What is that referring to?

6 A. That's a field name called DRG description.

7 Q. What that is doing is, that is putting in information
8 about DRGs, correct?

9 A. Yes.

10 Q. Then I go to the next page and I have, written by JSM
11 Computer Systems?

12 A. Yes.

13 Q. I guess I want to make sure JSM Computer Systems was a
14 company that, I guess I understood, you never used.

15 A. It was, again, the company name that we discussed
16 earlier that I was going to create a company but it
17 was never incorporated.

18 Q. Were you going to -- I guess I thought your prior
19 testimony was you engaged in that conversation after
20 1979, is that incorrect?

21 A. Excuse me?

22 Q. That you had that idea after 1979, am I incorrect on
23 that?

24 A. Yes, you are.

25 Q. When did you decide --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

182

1 A. Correct me if I'm wrong, I think I said that I stopped
2 using it after I was divorced, and I believe I used
3 that, JSM, even prior to '79 on other code, that we
4 did not discuss. That was my wife's name, my
5 daughter's name and my name.

6 Q. When did you get divorced? I thought you said it was
7 in the mid-'80s?

8 A. Again, I said I didn't have the exact date but I
9 thought it was '81 or '82. Like I said, I -- we were
10 separated for a long time.

11 Q. Again, I'm just trying to get this in point. You were
12 using the name JSM Computer Systems, you're saying, in
13 1979?

14 A. I was -- I believe I was using it even prior to that.

15 Q. Okay.

16 A. My daughter was born in '75, so I would have used it
17 anytime after she was born.

18 Q. And I'm just going through here, and this doesn't
19 appear to be a compiled version of the code. As I
20 understand a compiled version would put the date on
21 there when any changes are made; is that correct?

22 A. A compiled version would just put the date that you
23 compiled it.

24 Q. Now, on the AS -- this is code written for 36,
25 correct, System 36?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

183

1 A. Correct.

2 Q. On the AS400 there would be a field which would show
3 each time you make a change, correct?

4 A. Correct.

5 Q. Does the 36 have that capability?

6 A. I don't recall.

7 Q. Where did you obtain this code that you filed with the
8 copyright office?

9 A. This code came from an old computer I found in -- my
10 garage and computer came from 1985.

11 Q. Okay.

12 A. So it was the oldest code I could find.

13 Q. That would be a 1985 code?

14 A. That's the date of the computer. I don't know.
15 That's what I had for a computer. So it was a lot of
16 code prior to '85, as long as I had the computer.

17 Q. Where is that computer now?

18 A. It's in my office.

19 Q. Would it be available to access to determine whether
20 or not there had been any changes made to this code
21 and when those changes were made?

22 A. It would be available -- well, yeah, can I preface
23 that?

24 Q. Sure.

25 A. It's a 386 and it's -- it powers up occasionally.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

184

1 Q. So what you are saying is it may or may not work?

2 A. When you turn it on you cross your fingers and you
3 pray. Do you have any machines that are that old?

4 Q. IBM 386, though, you are saying that's 1985 --

5 A. That's a 1985 computer.

6 Q. -- computer?

7 A. The computer itself is 20 years old. It's a PC.

8 Q. I was going to say, a 386 I thought didn't come out
9 until a little later?

10 A. I think the first 386 was in 1985. It was very
11 expensive at the time.

12 Q. But going back to the public domain references on 18
13 and 20, you would agree with me, would you not, that
14 Medicare had an issue that is public domain or the
15 United States Government had an issue to put public
16 domain files in 1979?

17 A. Well, you know what, those files were actually the
18 same files that we used at Yale and I believe you are
19 incorrect.

20 Q. Okay. Did you get a document, written document, from
21 Yale allowing you to use those files?

22 A. No.

23 Q. Okay.

24 A. But they -- how else would I have gotten them in '79?

25 Q. Sir, show me where on here, other than the insertion

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

185

1 copyright, Joel Goldman, 1979 -- let me back up and
2 ask you, is this the same code that you had at the
3 Florida Keys facility in 1979?

4 A. Actually, this program would have been -- this was a
5 Puerto Rico program.

6 Q. How can you tell this was a Puerto Rico --

7 A. Because I didn't have my standard coding. It says UG
8 on it.

9 Q. What does UG stand for?

10 A. It stands for Ugaurta (ph), which was a person who
11 worked at the hospital in Puerto Rico.

12 Q. Why would you have Ugaurta's name on this?

13 A. Because prior to -- again, detail?

14 Q. Yes. I want the details.

15 A. Because the DRGs, in fact, were not used in the
16 States, I did use the DRG grouping as a way of
17 determining the type of patients. So that we could
18 estimate how patients affected the reimbursement in
19 Puerto Rico.

20 Q. Okay. What does Ugaurta have to do --

21 A. He was a physician that worked at the hospital in
22 Puerto Rico and we would use the software to
23 evaluate -- even though DRG was not a real term yet,
24 we could still use that DRG to determine if a
25 physician overused facilities or the facilities of the

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

186

1. hospital.

2 Q. What was the DRG you were using?

3 A. The Yale DRG, which was created in 1979.

4 Q. Okay. And you are saying that the references here on
5 18 and 20 to the public domain software, Yale gave you
6 that pre-1983?

7 A. Absolutely positively.

8 Q. But you don't have anything in writing that shows
9 that?

10 A. No, sir.

11 Q. Show me on this, other than your insertion of Joel
12 Goldman, 1979, where on here that anyone else looking
13 at this can see that this was actually created in
14 1979?

15 A. There really wouldn't be.

16 Q. Why would you have used written by JSM Computer
17 Systems on these other pages but not used it on this
18 one page?

19 A. You know, I would write software and make changes to
20 software, and pass changes over, and sometimes I wrote
21 something in, and sometimes I didn't and it just
22 really depended. This was a very old program. This
23 was one example.

24 Q. Well, apparently, they both say 1979 --

25 A. They both --

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

187

1 MR. SMITH: Wait for a question.

2 BY MR. DENNEN:

3 Q. That's why I'm asking you, why the difference?

4 A. There were quite a few programs in '79.

5 Q. Okay.

6 A. These --

7 Q. I guess I'm still trying to figure out why you would
8 have said written by JSM Computer Systems in one
9 instance and not in all instances? Was there any
10 magic to that?

11 A. Not really.

12 Q. Again, the computer that you found is a 386, that may
13 or may not work, you're saying that that one dates
14 back to 1985?

15 A. That was the original date of the computer.

16 Q. Right.

17 A. The software on it dates back -- when I originally
18 looked at the software, it dated back to 1980 and some
19 of it had said '79.

20 Q. So some of it said --

21 A. Some of the software was dated '79 as far as date
22 stamps. You know when --

23 Q. Sure.

24 A. -- you power the machine up and you look at the date
25 stamp on the file itself? It had a date stamp of

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

188

1 1979.

2 Q. Some of it did?

3 A. Yes.

4 Q. But not all of?

5 A. Well, on a PC, as you know, when you make a change, it
6 changes the date stamp. Even if you look at it and
7 then save it, it will save the date stamp.

8 Q. So changes were made on the software from '79 to '85.
9 and those changes were noted on the PC?

10 A. You know, even if there wasn't changes made, it could
11 have been noted on the PC. For instance, if you open
12 up a Word document and then put it back on your
13 machine, it would change the date. So that's not --

14 Q. There is no way to look at that machine and know that
15 your testimony, that the copyright symbol was on here
16 and this is the '79 code, is accurate, correct? There
17 is no way to verify independently that statement?

18 A. I guess that would be a fair...

19 Q. Sir, I'm going to give you this and ask you if you
20 recognize that?

21 A. It's a disk that was given to me from HMS.

22 Q. Okay. So that is HMS's code then, correct?

23 A. No, this is my program -- this was given to me from
24 HMS as discovery, I believe, or it was sent to us.

25 Q. Let's back up. Do you recognize the information that

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

189

1 is contained --

2 A. I do.

3 Q. -- in the paper?

4 A. I do.

5 Q. Tell me what that information is.

6 A. It is actually a copy of the pharmacy programs that I
7 had written.

8 Q. These pharmacy programs would have been one of the
9 ones given to Mr. Givens at the meeting we discussed?

10 A. You know, until they actually gave it to me, I didn't
11 recall that I had given it to him but, apparently, I
12 did.

13 Q. Okay. Now, let's make that Exhibit Number 206.

14 MARKED BY THE REPORTER:

15 DEPOSITION EXHIBIT NUMBER 206

16 BY MR. DENNEN:

17 Q. So have you had an opportunity to review --

18 A. I did look at some of it, yes.

19 Q. And on that pharmacy program, where can you show me
20 that it has a copyright date and --

21 A. You know, the pharmacy system I didn't -- I don't
22 believe I ever even put a copyright on any of the
23 pharmacy.

24 Q. I thought your prior testimony was that was your
25 method of insuring that since you apparently gave out

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

190

1 the source code indiscriminately, it was the copyright
2 symbol?

3 MR. SMITH: Object to the characterization
4 of the witness's testimony.

5 BY MR. DENNEN:

6 Q. You can answer.

7 A. The pharmacy program wasn't really one that I was that
8 proud of. It wasn't -- you know, it would have been
9 more like a give-away program. It's not as useful.

10 Q. Now, when we went through the list of modules of
11 programs that you had, the pharmacy was one of the
12 ones that you listed. So are you saying that you
13 didn't find that pharmacy program to be valuable?

14 A. Exactly.

15 Q. So, therefore, are you saying that you altered your
16 habit of putting the copyright symbol on there?

17 A. You know, I didn't even think about it.

18 Q. Okay.

19 A. It was -- it would have been similar to, let's say,
20 the IBM program that I did not write. The pharmacy
21 was only running with one installation.

22 Q. Which one was that?

23 A. Florida Keys Memorial Hospital.

24 Q. That was created on Florida Keys system?

25 A. Yes, it was.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

191

1 Q. That was running on their system?

2 A. Yes, it was.

3 Q. And was that created again -- well, let me back up.

4 Hand me if you would, the exhibit 206,
5 please, sir.

6 Now, I will note for the record that at the
7 top it has a SEU source listing and a date of June 8,
8 '06. That's merely the date it was printed, correct?

9 A. Yes.

10 Q. I'm going to show you this one page. I'm sorry, I
11 don't have another copy of that.

12 Do you see where it says, written by JSM,
13 up there at the top?

14 A. Uh-huh.

15 Q. Again, that is the JSM we have previously referenced
16 in the -- excuse me, the deposit with the Copyright
17 Office, correct?

18 A. Yes.

19 Q. And that JSM name, I guess, if this came from Mr.
20 Givens, you were still using it in '83, correct?

21 A. Yeah. Well, I take that back because I don't know
22 if -- you know, I wrote this program for one facility
23 and I didn't make any program changes to it so it
24 would have -- you know, this could have been the same
25 code from '81 or -- I don't even know exactly when I

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

192

1 wrote this. It would have been possibly '80, '81. I
2 really don't know the exact date but I didn't make a
3 lot of changes to it.

4 Q. Okay. I'm going to show you another page. You can
5 hold on to both of those pages. And you see similarly
6 the reference to JSM, do you not, sir?

7 A. Uh-huh.

8 Q. And, again, there is no copyright notice, is there?

9 A. That's correct.

10 Q. When you gave this diskette to Mr. Givens when he was
11 with AMC, what did you expect him to do with that?

12 A. You know, again, I didn't even recall giving that
13 diskette to him.

14 Q. Why do you think you gave it to him?

15 A. Maybe to show him a sample of the pharmacy.

16 Q. A sample of the pharmacy program?

17 A. Exactly.

18 Q. That would be the purpose of inducing him to consider
19 buying it?

20 A. You know, I just don't recall. I was surprised he had
21 a copy of it.

22 Q. That's more of it. I need a bigger clip.

23 Who would be Kasnak Software Specialists,
24 that the individual we referred to earlier?

25 A. Yes.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

193

1 Q. To your knowledge, is there -- well, let's back up.

2 You have in your possession software
3 licensed by HMS to Carbon County Hospital; is that
4 correct?

5 A. Do I have it in my possession?

6 Q. Yes.

7 A. That you guys gave me?

8 Q. No, sir. This would be that you obtained in your
9 responses to requests for admission -- excuse me, in
10 your Rule 26 disclosures, you state that you have
11 copies of computer software sold or licensed by HMS to
12 Carbon County Hospital?

13 MR. SMITH: May I see that, please?

14 MR. DENNEN: Sure.

15 BY MR. DENNEN:

16 Q. How did you obtain that?

17 A. That was e-mailed to me.

18 Q. Who e-mailed it to you?

19 A. Patty Echler (ph), I believe. I would have to look at
20 my records. It's an employee of HMS.

21 Q. An employee of HMS?

22 A. Yes.

23 Q. And why did she e-mail that to you?

24 A. They were installing the HMS software at Carbon and it
25 was one of their conversion file formats.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

194

1 Q. Carbon, that's one of the ones in Wyoming, correct?

2 A. That's -- yes.

3 Q. You have that in your possession and control, correct,
4 sir?

5 A. Yes. It was a database, not software.

6 Q. I wanted to ask you, and I'm going to show this form
7 to you, ask you to take a look at it.

8 (Discussion off the record)

9 BY MR. DENNEN:

10 Q. Apparently, we -- no.

11 A. There is a couple of different ones together.

12 Q. Tell you what, if you would, sir, you separate them
13 out. Okay.

14 Now, taking back, and I'm marking as
15 Exhibit Number 207, the one that you separated out.
16 Take a look at that, sir, if you would.

17 MARKED BY THE REPORTER:

18 DEPOSITION EXHIBIT NUMBER 207

19 BY MR. DENNEN:

20 Q. You have taken a look at that document?

21 A. Yes.

22 Q. Tell me what that is, the whole document.

23 A. I believe it's for the copyright registration for the
24 '97 code. I'm not sure.

25 Q. Okay. So that is a document you filed with the United

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

195

1 States Copyright Office with respect to the 1997
2 version of the code; is that correct?

3 A. Yes.

4 Q. If you would, there are several entries in there where
5 I believe it -- these are dates referenced other than
6 1997, am I correct about that?

7 A. You are correct.

8 Q. Why is that?

9 A. Because I was -- when we registered it, I had code
10 that was -- I tried to find old -- as old a code as
11 possible for the '97. The large of the percentage of
12 this was written in '97.

13 Q. But some of it is written afterward, is it not?

14 A. There were some program changes that were made after
15 that time period.

16 Q. So, in fact, that doesn't reflect the 1997 version of
17 the codes, does it?

18 A. It -- besides minor changes, it is '97 code. I
19 mean --

20 Q. But there are changes that were made after the year
21 1997, are there not, in that -- as evidenced by the
22 face of the document?

23 A. I believe the face of the document.

24 Q. The pages that are attached?

25 A. The first page here was just a sample of the screen

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

196

1 that was created.

2 Q. Okay.

3 A. That just comes from the computer. It's not part of
4 the program --

5 Q. I understand that.

6 A. When we went through it, and if I there was some date
7 stamps that were dated, I believe, '98. And it's a
8 small routine.

9 Q. Right.

10 A. So there was some code that was added.

11 Q. Right. So it is, in fact, not the 1997 version of the
12 code, correct, sir?

13 A. Again, I will preface that, it's 99 percent '97 code.

14 Q. Do you see, sir, at line 8, certification, box 8?

15 A. Yes.

16 Q. That certifies all the statements you make in there
17 are true?

18 A. Yes.

19 Q. In fact, on the first page you make a certification,
20 do you not, the date of the publication of this
21 particular work that's in line 3. Do you see that?

22 A. Yes.

23 Q. And that does not say 1998, does it?

24 A. Yes.

25 Q. What is the date it says in there?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

197

1 A. '97.

2 Q. So, therefore, your statement to the United States
3 Copyright Office is inaccurate, isn't it?

4 A. The copy of the software itself was running and
5 written in 1997. The version that we filed had some
6 minor changes in it. I'm going to preface that with
7 the simple thing that I made a mistake, since we filed
8 it in 2004, that it had some minor changes that did
9 not affect the major portions of the program.

10 Again, 99 percent of this program was
11 written in 1997, and a larger percentage of that came
12 from original code in 1983. It was a derivative
13 product of the '83 code, or '79 code actually so...

14 Q. What was the '83 code --

15 A. The '83 code would have been the code I gave Mr.
16 Givens.

17 Q. Okay.

18 A. So the --

19 Q. Well, let me ask you this: I asked you a yes-or-no
20 question and I said the certification you made to the
21 United States Copyright Office that this attachment
22 was created on in 1997 was inaccurate, is it not?
23 It's a yes-or-no question, sir.

24 A. Yes.

25 Q. The statement is inaccurate?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

198

1 A. Since there was some work that was -- some items added
2 after '97.

3 Q. Right. Now, that's because of the passage of time,
4 correct?

5 A. Yes.

6 MR. SMITH: Could you clarify what you
7 mean, what is because of the passage of time?

8 MR. DENNEN: The inaccuracies in the code.
9 He didn't have a copy of his 1997 code. He was having
10 to recreate it.

11 THE WITNESS: I need some water.

12 MR. SMITH: Could you start over and
13 rephrase the question?

14 THE WITNESS: Yeah.

15 BY MR. DENNEN:

16 Q. The reason you submitted what was not the 1997 version
17 of the code was because you didn't have the 1997
18 version of the code to submit, correct?

19 A. I think the question is a little vague. I -- the real
20 problem -- well, I'm not going to go into an
21 explanation.

22 Q. Tell me what the explanation is.

23 A. The code was written in 1997. This program was
24 written -- was converted to Y2K in 1997. I
25 will -- again, 99 percent of the code was in 1997.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

199

1 When we submitted it to the Copyright
2 Office, we tried to submit a code when it was
3 originally written, which was 1997. I submitted a
4 code that I thought was all intact. I did not look at
5 every line when I submitted it. It's still -- I will
6 go by the statement, I believe, except for a couple
7 minor changes that it is a 1997 copy, to the best of
8 my ability.

9 Q. Okay.

10 A. And that is, again, to the best of my ability, slash,
11 knowledge.

12 Q. Okay. I'm going to show you three separate documents.
13 Let's move this because I don't want to get everyone
14 confused. I want to show you three separate
15 documents. First that document, do you recognize that
16 document?

17 A. Yes.

18 Q. Tell me what that document is?

19 A. That is a program and a printout.

20 Q. Is that what is referred to as a compiled version of
21 the printout, the program rather?

22 A. No, it's just a printout of the source code. It is
23 not a compiled version.

24 Q. Now, I want to show you, sir, where you have copyright
25 date. Do you see that on that line?

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

200

1 A. Yes, yes.

2 Q. And what is it that you have inserted there?

3 A. That I did from 1979 to 2004.

4 Q. Okay. I believe you have your name, do you not?

5 A. Yes, I do.

6 Q. Then what is the date when you made that insertion?

7 A. I made that insertion on 8-25-04.

8 Q. Do you know why you made that change on 8-25-04?

9 A. Yes, I do.

10 Q. Why was that?

11 A. Because I was confused by some -- I thought that it
12 was like Microsoft, where -- when Microsoft puts a
13 copyright notice in, that they put a from and to date
14 and I thought I needed to show when the original was,
15 and this was a derivative product of that.

16 Q. What did it say before you made the change?

17 A. I don't recall.

18 MR. DENNEN: I'm going to mark that as
19 Exhibit Number 208.

20 MARKED BY THE REPORTER:

21 DEPOSITION EXHIBIT NUMBER 208

22 BY MR. DENNEN:

23 Q. Now, I'm going to show you another piece of paper.

24 And I will represent to you that the markings up at
25 the top in ink are our markings.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

201

1 A. Okay.

2 Q. That's the same program, is it not, sir?

3 A. Yes. Well, hold on one second.

4 Q. Take your time.

5 A. It appears to be the same.

6 Q. Okay. On the line with the copyright date, what is
7 the notation there?

8 A. The 1989?

9 Q. I guess. Right here, line 4, it says 1989 to 2004?

10 A. Yes.

11 Q. Does it not?

12 A. Yes.

13 Q. It also says Goldman & Goldman, Inc., correct?

14 A. Yes.

15 Q. So when did Goldman & Goldman, Inc. -- do you have a
16 written document between Goldman & Goldman and you
17 transferring the copyright back?

18 A. No. I didn't -- I never transferred that to Goldman &
19 Goldman, Inc.

20 Q. Okay. That's inaccurate then; is that correct?

21 A. Yes.

22 MR. SMITH: What is inaccurate?

23 MR. DENNEN: Well, the statement that the
24 copyright is owned by Goldman & Goldman, Inc.

25 A. It is not owned by Goldman & Goldman, Inc.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

202

1 BY MR. DENNEN:

2 Q. I'm trying to -- I'm trying to understand why you have
3 two different names on the same program apparently
4 done at the same time.

5 MR. SMITH: Is there a question pending?

6 MR. DENNEN: Yes.

7 BY MR. DENNEN:

8 Q. I'm asking that question, why are there two separate
9 dates and two separate legal entities --

10 A. I don't think these were done at the same time.

11 Q. Well, obviously, within --

12 A. I think you are going to need to talk to Ingrid, who
13 filed the copyrights, because --

14 MR. SMITH: Careful, I don't want you to
15 reveal any communications with Ingrid.

16 THE WITNESS: I'm sorry.

17 BY MR. DENNEN:

18 Q. Are you giving me permission to speak with Ingrid?

19 A. No.

20 Q. Were you the person who put in Goldman & Goldman,
21 Inc., 1989 to 2004?

22 A. Yes.

23 Q. Were you instructed to do that by someone?

24 A. I was going to file new copyrights for the new -- for
25 all of the software when I have additional software

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

203

1 besides medical records, and so forth. So we were
2 going to get software ready to file for a new
3 copyright for code, all for the AS400, not just the
4 medical records but all other programs. So I was
5 unsure whether to file it under Goldman & Goldman or
6 the Joel Goldman. We didn't know at the time so
7 I -- to the best of my recollection.

8 Q. I guess my question is, did you intend to transfer the
9 copyright to Goldman & Goldman?

10 A. Again, I --

11 MR. SMITH: Just to clarify, is the
12 question, when this was inserted was there an
13 intention to have that accomplished --

14 MR. DENNEN: I think that's up to him to
15 answer.

16 MR. SMITH: -- or to reflect a transfer or
17 was there an intent to transfer at any time?

18 MR. DENNEN: I think my question was, did,
19 he, Mr. Goldman intend to transfer the copyright to
20 Goldman & Goldman?

21 MR. SMITH: By virtue of this insertion?

22 MR. DENNEN: No, period.

23 A. If I was going to sell my corporation in the future, I
24 was going to transfer the software to the corporation
25 and file a new copyright with that to give value to

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

204

1 the new corporation if I got out of the computer
2 software business.

3 BY MR. DENNEN:

4 Q. Okay. Did you, in fact, ever transfer the copyright
5 to Goldman & Goldman?

6 A. No.

7 Q. Have you ever indicated to anyone that you had
8 transferred the copyright to Goldman & Goldman?

9 A. What is the word indicated?

10 Q. Stated, informed.

11 A. To a third party?

12 Q. To a third party, any third party.

13 A. Not that I recall.

14 Q. Okay. When you did business with the group in
15 Wyoming, was that as Goldman & Goldman, Douglas and
16 Rawlins Hospitals?

17 A. I -- yes, I believe so.

18 Q. Were there agreements, although you -- well, you said
19 you may have had them, may not. Were they with Joel
20 Goldman or were they with Goldman & Goldman?

21 A. We'll have to -- why don't we pull those agreements
22 and I will --

23 Q. To your recollection, were they with Joel Goldman or
24 were they with Goldman & Goldman?

25 A. I think they were with Goldman & Goldman.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

205

1 Q. Okay. So did Goldman & Goldman ever have any formal
2 documents that gave it the right to license that
3 software?

4 A. No.

5 Q. Now, by the way, just for the record, this document is
6 number 209. This is the version that says Goldman &
7 Goldman.

8 MARKED BY THE REPORTER:

9 DEPOSITION EXHIBIT NUMBERS 209, 210

10 BY MR. DENNEN:

11 Q. I'm showing you a document I am marking as 210 and ask
12 you to take a look at it.

13 Again, except for the handwritten notation
14 at the hospital, which I will represent to you we
15 added for identification purposes, this appears to be
16 the same program that we discussed in the prior two
17 exhibits, is it not?

18 A. Actually, it's a different program. This one
19 says -- has a different heading on the top, and this
20 one says service code.

21 MR. GIVENS: When you cross reference, this
22 was prior to him...

23 BY MR. DENNEN:

24 Q. Let's assume for the discussion purposes -- we can go
25 line by line and compare the code at some point,

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

206

1 but -- let the record reflect the witness is
2 reviewing.

3 A. It's a similar program.

4 Q. Is this a program you created?

5 A. Yes.

6 Q. I notice that at the top it doesn't comply with your
7 naming convention, and that it doesn't have a
8 reference to either Joel Goldman, JSM Computer Systems
9 or Goldman & Goldman. Do you know why that would be
10 the case?

11 A. Sometimes I would forget to put it in.

12 Q. Now, if you would, let's put that aside, clean up our
13 table here, because we don't want to get confused.

14 I'm going to give you three documents. Ask
15 you to take a look at them.

16 A. Can we take a minute? Can I take a break?

17 Q. I'm going to ask you, these documents, do they appear
18 to be the copy of the same code with the same
19 differences that we discussed with the prior exhibits?

20 A. Yes.

21 MR. DENNEN: We will make that collective
22 Exhibit Number 211.

23 MARKED BY THE REPORTER:

24 DEPOSITION EXHIBIT NUMBER 211

25 MR. SMITH: Do you want to take a break

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

207

1 now? Off the record.

2 (A recess was taken)

3 BY MR. DENNEN:

4 Q. Mr. Goldman, we previously had a discussion off the
5 record. I'm going to show you basically three
6 documents, which, again, have handwritten markings at
7 the top but which reflect the same differences in the
8 program as far as the ownership, the date, or the lack
9 thereof.

10 Do you see that, sir?

11 A. Yes.

12 Q. Would your testimony be the same with respect to these
13 documents, as it was with respect to Exhibit Number
14 211, and I guess 208, the prior testimony?

15 A. Yes.

16 Q. That would be Exhibit Number 212.

17 MARKED BY THE REPORTER:

18 DEPOSITION EXHIBIT NUMBER 212

19 BY MR. DENNEN:

20 Q. For the interest of expediency, we will mark that as
21 collective Exhibit Number 212.

22 Again, Mr. Goldman, I'm marking as
23 collective Exhibit Number 213, a similar group of
24 documents.

25 MARKED BY THE REPORTER:

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

208

1 DEPOSITION EXHIBIT NUMBER 213

2 BY MR. DENNEN:

3 Q. Let's put those together, or at least keep them
4 separate. I don't want to get that confused.

5 I have given you Number 213. If you would
6 sir, take a moment. And my question to you is: Would
7 your testimony be the same with respect to the dates
8 and the names and, I guess, copyright attribution with
9 respect to that one as well, that exhibit?

10 A. Yes.

11 Q. Same question with respect to collective Exhibit
12 Number 214.

13 MARKED BY THE REPORTER:

14 DEPOSITION EXHIBIT NUMBERS 214, 215

15 BY MR. DENNEN:

16 Q. Same question with respect to Exhibit Number 215, same
17 question, is your answer the same?

18 I'm going to show you what appears to be
19 the same with this collective exhibit. I'm out of
20 stickers now.

21 The only difference between this one and
22 the prior one is that it appears that the 1989 to 2004
23 still refers to Goldman & Goldman, Inc. on the two
24 documents that have a copyright notice on them.

25 A. These are not the same.

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

209

1 Q. These are different programs?

2 A. Yes, these are not the same.

3 Q. If you would, sir, point out to me how you know that
4 they are not the same?

5 A. This is year to date, and they are different programs.

6 Q. They are different. So the answer to the question is
7 they are different programs?

8 A. (Witness indicating.)

9 Q. At the risk of extending this past our self-committed
10 deadline, why don't we stop right here. We will come
11 back -- off the record.

12 (Discussion off the record)

13 MR. DENNEN: We have been on the record, or
14 off the record rather. We have agreed we will do one
15 more day of this deposition, if necessary. But I will
16 state that I have informed counsel that I don't
17 believe it will take more than four hours.

18 MR. SMITH: We are agreed. The deposition
19 is adjourned.

20 (The deposition was adjourned at 6:15 p.m.

21 Signature of the witness was not requested by
22 counsel for the respective parties hereto)

23

24

25

Goldman v. Healthcare Management Systems
Deposition of Joel Goldman

June 14, 2006

210

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, Karen Klerekoper, a Certified Shorthand reporter, a Notary Public, hereby certified that I recorded in shorthand the examination of Joel Goldman, the deponent in the foregoing deposition; and that prior to the taking of said deposition the deponent was first duly sworn, and that the foregoing is a true, correct and complete transcript of the testimony of said deponent.

I further certify that no request was made for submission of the transcript to the deponent for reading and signature and that no such submission was made.

I also certify that I am not a relative or employee of a party or an attorney for a party; or financially interested in the action.

Karen Klerekoper
Karen Klerekoper, CSR-4250, RPR

Notary Public, Oakland County, Michigan
My Commission expires: 10/7/12
Dated: This day of June 20, 2006